

1485

1 UNITED STATES DISTRICT COURT  
2

3 EASTERN DISTRICT OF TEXAS  
4

5 SHERMAN DIVISION  
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7 THE UNITED STATES OF AMERICA ] CASE NO. 4:12CR16  
VS. ] 9 AM, DECEMBER 11, 2012  
8 RENE CORTEZ SALAZAR, ET AL ] PLANO, TEXAS  
9

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11 REPORTER'S TRANSCRIPT OF JURY TRIAL  
12

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19 THE HONORABLE RICHARD A. SCHELL, U.S. DISTRICT JUDGE, PRESIDING  
20

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22  
23  
24 PROCEEDINGS REPORTED IN REALTIME USING COMPUTERIZED STENOTYPE,  
25 TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION.

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1 [COURT REPORTER'S NOTES 20121211, 9 AM, WEDNESDAY,  
2 DECEMBER 11, 2012, PLANO, TEXAS, U.S. DISTRICT JUDGE RICHARD A.  
3 SCHELL PRESIDING]

4 APPEARANCES:

5 FOR THE GOVERNMENT: ERNEST GONZALEZ  
6 TRACEY BATSON  
7 ASSISTANT U.S. ATTORNEYS  
8 U.S. ATTORNEY'S OFFICE  
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6 972-965-1016

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08:58AM 11

08:58AM 12

09:06AM 13 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

09:06AM 14 THE COURT: THANK YOU. PLEASE BE SEATED.

09:06AM 15 MR. GONZALEZ, DID YOU HAVE SOMETHING BEFORE WE BRING

09:06AM 16 IN THE JURY?

09:06AM 17 MR. GONZALEZ: NO, I DON'T, YOUR HONOR.

09:06AM 18 THE COURT: OKAY.

09:06AM 19 LET ME TELL ALL OF YOU THAT I RECEIVED ANOTHER NOTE

09:06AM 20 FROM THE JURY. THIS ONE WAS JUST HANDED TO ME. THIS IS FROM

09:06AM 21 NUMBER 2. I'LL READ IT VERBATIM. "JUDGE SCHELL, IF THE TRIAL

09:06AM 22 CONTINUES BEYOND THIS WEEK, I HAVE TWO MEDICAL TESTS SCHEDULED

09:06AM 23 ON MONDAY AND TUESDAY MORNING, DECEMBER 17TH AND DECEMBER 18TH.

09:06AM 24 THANK YOU." AND SHE SIGNS HER NAME, JUROR NUMBER 2.

09:06AM 25 MR. GONZALEZ: YOUR HONOR, WE HAVE TWO MORE WITNESSES

09:06AM 1 THEY ARE GOING TO BE SHORT WITNESSES.

09:06AM 2 THE COURT: OKAY. I'LL REASSURE HER THAT SHE'LL BE  
09:06AM 3 ABLE TO GO TO HER TESTS.

09:07AM 4 IT LOOKS LIKE EVERYONE IS HERE.

09:07AM 5 ALL RIGHT, MR. HOLLIS, GO AHEAD AND BRING IN THE  
09:07AM 6 JURY.

09:07AM 7 COURT SECURITY OFFICER: ALL RISE.

09:08AM 8 [OPEN COURT, DEFENDANTS AND JURY PRESENT]

09:08AM 9 THE COURT: ALL RIGHT. TAKE YOUR SEATS.

09:08AM 10 LADIES AND GENTLEMEN, WE'RE READY TO CONTINUE WITH  
09:08AM 11 THE GOVERNMENT'S CASE-IN-CHIEF.

09:08AM 12 MR. GONZALEZ, WHO IS YOUR NEXT WITNESS?

09:08AM 13 MR. GONZALEZ: THE GOVERNMENT CALLS MELISSA STEWART.

09:08AM 14 THE COURT: OKAY.

09:08AM 15 MS. STEWART, JUST COME RIGHT DOWN IN FRONT OF THIS  
09:08AM 16 LADY RIGHT HERE. WOULD YOU RAISE YOUR RIGHT HAND, PLEASE,  
09:08AM 17 MA'AM.

09:08AM 18 DEPUTY COURT CLERK: YOU DO SOLEMNLY SWEAR THAT THE  
09:08AM 19 TESTIMONY YOU SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE  
09:08AM 20 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP  
09:08AM 21 YOU GOD.

09:08AM 22 THE WITNESS: YES, I DO.

09:08AM 23 THE COURT: OKAY. JUST COME AROUND RIGHT OVER HERE.

09:09AM 24 ALL RIGHT, MR. GONZALEZ.

09:09AM 25

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09:09AM 1 DIRECT EXAMINATION OF MELISSA RENEE STEWART ON BEHALF OF THE  
09:09AM 2 GOVERNMENT

09:09AM 3 MR. GONZALEZ:

09:09AM 4 Q. MS. STEWART, IF YOU CAN GET CLOSE TO THAT MIKE, WE CAN  
09:09AM 5 HEAR YOUR VOICE.

09:09AM 6 A. OKAY.

09:09AM 7 Q. THANK YOU.

09:09AM 8 WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE COURT,  
09:09AM 9 THE JURY AND THE RECORD.

09:09AM 10 A. MELISSA RENEE STEWART.

09:09AM 11 Q. AND HOW OLD ARE YOU?

09:09AM 12 A. 38.

09:09AM 13 Q. WHERE WERE YOU BORN?

09:09AM 14 A. CARSON CITY, NEVADA.

09:09AM 15 Q. AND WHERE HAVE YOU RESIDED MOST OF YOUR LIFE?

09:09AM 16 A. BETWEEN LAS VEGAS, NEVADA, AND SHERMAN, TEXAS.

09:09AM 17 Q. ARE YOU MARRIED?

09:09AM 18 A. NO, SIR.

09:09AM 19 Q. DO YOU HAVE ANY CHILDREN?

09:09AM 20 A. YES.

09:09AM 21 Q. HOW MANY CHILDREN DO YOU HAVE?

09:09AM 22 A. I HAVE ONE DECEASED AND TWO ALIVE.

09:09AM 23 Q. AND WHAT ARE THEIR AGES?

09:09AM 24 A. 13 AND 14 RIGHT NOW.

09:09AM 25 Q. OKAY.

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09:09AM 1 AND WHAT DO YOU DO FOR A LIVING?

09:09AM 2 A. I WORK AT A VIDEO STORE.

09:09AM 3 Q. HOW LONG HAVE YOU BEEN WORKING THERE?

09:09AM 4 THE COURT: WOULD YOU SPEAK A LITTLE LOUDER?

09:09AM 5 THE WITNESS: I'M SORRY.

09:09AM 6 I WORK AT A VIDEO STORE. I'VE BEEN THERE FOR A YEAR

09:09AM 7 AND A HALF NOW.

09:09AM 8 MR. GONZALEZ:

09:09AM 9 Q. AND IS THAT IN DENISON, TEXAS?

09:09AM 10 A. YES, SIR.

09:09AM 11 Q. WHAT'S THE HIGHEST LEVEL OF EDUCATION THAT YOU HAVE

09:10AM 12 ATTAINED IN YOUR LIFE?

09:10AM 13 A. TENTH GRADE.

09:10AM 14 Q. OKAY. AND DID YOU EVER RECEIVE YOUR GED?

09:10AM 15 A. NO, SIR.

09:10AM 16 Q. PRESENTLY, YOU HAVE A CASE PENDING BEFORE THIS COURT,

09:10AM 17 IS THAT CORRECT?

09:10AM 18 A. YES, SIR.

09:10AM 19 Q. WHAT ARE THE CHARGES THAT WERE BROUGHT AGAINST YOU IN

09:10AM 20 THIS COURT?

09:10AM 21 A. CONSPIRACY TO SELL METHAMPHETAMINES.

09:10AM 22 Q. OKAY. AND WHAT IS THE STATUS OF YOUR CASE? HAVE YOU

09:10AM 23 PLED GUILTY TO THAT OFFENSE?

09:10AM 24 A. YES, SIR.

09:10AM 25 Q. HAVE YOU BEEN SENTENCED YET?

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09:10AM 1 A. NO.

09:10AM 2 Q. NOW, PRIOR TO PLEADING GUILTY TO THIS OFFENSE  
09:10AM 3 OF CONSPIRACY TO POSSESS WITH THE INTENT TO DISTRIBUTE  
09:10AM 4 METHAMPHETAMINE, HAD YOU BEEN CONVICTED OF ANY OTHER  
09:10AM 5 PRIOR FELONY OFFENSES?

09:10AM 6 A. NO, SIR.

09:10AM 7 Q. NOW, WHEN EXACTLY WAS IT THAT YOU BECAME INVOLVED IN  
09:10AM 8 THE DISTRIBUTION OF METHAMPHETAMINE?

09:10AM 9 A. I STARTED IN FEBRUARY OF 2011.

09:10AM 10 Q. AND WHO WAS YOUR SUPPLIER IN FEBRUARY OF 2011?

09:10AM 11 A. I WENT TO A FRIEND OF MINE NAMED TERRELL.

09:10AM 12 Q. AND WHAT QUANTITIES WERE YOU DISTRIBUTING BACK IN  
09:10AM 13 FEBRUARY OF 2011?

09:10AM 14 A. AT FIRST, I STARTED GETTING A GRAM ABOUT EVERY DAY,  
09:11AM 15 SOMETIMES EVERY OTHER DAY.

09:11AM 16 Q. AND WERE YOU DISTRIBUTING THAT GRAM THERE IN THE  
09:11AM 17 DENISON AREA?

09:11AM 18 A. YES.

09:11AM 19 Q. AT SOME POINT DID YOU ACQUIRE ANOTHER SUPPLIER?

09:11AM 20 A. I GOT IN TROUBLE IN APRIL AND I QUIT UNTIL JUNE.  
09:11AM 21 AND THAT'S WHEN I STARTED DOING--WORKING WITH RENE.

09:11AM 22 Q. AND WHEN YOU SAY "RENE," IS THAT RENE SALAZAR?

09:11AM 23 A. YES, SIR.

09:11AM 24 Q. DO YOU SEE HIM IN THE COURTROOM TODAY?

09:11AM 25 A. YES, SIR.

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09:11AM 1 Q. OKAY. IF THIS IS PERSON NUMBER 1, PERSON NUMBER 2,  
09:11AM 2 PERSON NUMBER 3, PERSON NUMBER 4, PERSON NUMBER 5, PERSON  
09:11AM 3 NUMBER 6, WHICH PERSON WOULD HE BE?

09:11AM 4 A. PERSON NUMBER 2.

09:11AM 5 MR. GONZALEZ: YOUR HONOR, MAY THE RECORD REFLECT  
09:11AM 6 THAT THIS WITNESS HAS IDENTIFIED THE DEFENDANT RENE SALAZAR?

09:11AM 7 THE COURT: YES.

09:11AM 8 MR. GONZALEZ:

09:11AM 9 Q. NOW, WHEN EXACTLY DID YOU START GOING TO HIM FOR  
09:11AM 10 METHAMPHETAMINE?

09:11AM 11 A. IT WAS IN JUNE.

09:11AM 12 Q. OKAY. OF WHAT YEAR?

09:12AM 13 A. 2011.

09:12AM 14 Q. AND HOW WAS IT THAT YOU MET OR KNEW RENE SALAZAR?

09:12AM 15 A. HE WAS WITH MY SISTER FOR A WHILE.

09:12AM 16 Q. BUT YOU KNEW HIM BEFORE THEN. CORRECT?

09:12AM 17 A. BEFORE HE GOT WITH MY SISTER?

09:12AM 18 Q. WELL, BEFORE YOU STARTED DEALING WITH HIM.

09:12AM 19 A. OH, YEAH, YEAH, YEAH.

09:12AM 20 Q. BECAUSE HE WAS WITH YOUR SISTER?

09:12AM 21 A. YES.

09:12AM 22 Q. WHAT WAS YOUR SISTER'S NAME?

09:12AM 23 A. SHERRY WEST.

09:12AM 24 Q. AND WHEN YOU FIRST STARTED WITH RENE SALAZAR, WHAT  
09:12AM 25 QUANTITIES WERE YOU RECEIVING FROM HIM?

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09:12AM 1 A. WHEN I FIRST STARTED, I WAS GETTING, LIKE, A QUARTER-  
09:12AM 2 OUNCE A DAY MAYBE.  
09:12AM 3 Q. AND DID THAT AMOUNT INCREASE OVER TIME?  
09:12AM 4 A. YES.  
09:12AM 5 Q. WHAT DID IT INCREASE TO?  
09:12AM 6 A. ABOUT AN OUNCE.  
09:12AM 7 Q. AND HOW QUICKLY DID IT INCREASE TO AN OUNCE?  
09:12AM 8 A. ALL I WORKED WITH RENE WAS FROM JUNE TO AUGUST, UNTIL  
09:12AM 9 HE WAS INCARCERATED.  
09:12AM 10 Q. SO SOMETIME BETWEEN JUNE AND AUGUST YOU WENT FROM A  
09:12AM 11 QUARTER TO AN OUNCE?  
09:12AM 12 A. YES, SIR.  
09:12AM 13 Q. NOW, AT THE TIME THAT YOU FIRST STARTED GOING TO HIM  
09:13AM 14 TO HAVE HIM SUPPLY YOU, WHERE WAS HE LIVING?  
09:13AM 15 A. I THINK THAT HE WAS IN THE APARTMENT BEHIND HIS SISTER'S  
09:13AM 16 HOUSE.  
09:13AM 17 Q. APARTMENT BEHIND WHO?  
09:13AM 18 A. HIS SISTER'S HOUSE.  
09:13AM 19 Q. OKAY.  
09:13AM 20 AND DO YOU RECALL WHO HE WAS LIVING WITH AT THAT  
09:13AM 21 TIME?  
09:13AM 22 A. I THINK HIM AND MY SISTER WERE ON AND OFF AT THAT TIME.  
09:13AM 23 I'M NOT REAL SURE.  
09:13AM 24 Q. OKAY.  
09:13AM 25 A. THEY WERE ALWAYS ON AND OFF.

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09:13AM 1 Q. AND WAS HE FRONTING YOU THE DRUGS?

09:13AM 2 A. YES.

09:13AM 3 Q. SO YOU WOULD SELL THE DRUGS AND THEN BRING HIM BACK THE

09:13AM 4 AMOUNTS?

09:13AM 5 A. YES.

09:13AM 6 Q. HOW MUCH WERE YOU BUYING A QUARTER-OUNCE FOR?

09:13AM 7 A. 200.

09:13AM 8 Q. OKAY. AND HOW MUCH WERE YOU SELLING IT FOR?

09:13AM 9 A. SOMETIMES I WOULD MAKE 250, SOMETIMES I WOULD MAKE 300.

09:13AM 10 IT VARIED.

09:13AM 11 Q. SO, BASICALLY, YOU WENT FROM A QUARTER-OUNCE TO MAYBE A

09:13AM 12 HALF-OUNCE?

09:13AM 13 A. YES.

09:13AM 14 Q. AND HOW MUCH WERE YOU BUYING A HALF-OUNCE FOR?

09:13AM 15 A. 400.

09:13AM 16 Q. AND HOW MUCH WERE YOU SELLING IT FOR?

09:14AM 17 A. I WOULD MAKE A HUNDRED DOLLARS OFF THAT.

09:14AM 18 Q. AND THEN FROM A HALF-OUNCE TO AN OUNCE?

09:14AM 19 A. YES.

09:14AM 20 Q. DO YOU RECALL HOW MUCH YOU WERE PAYING FOR AN OUNCE?

09:14AM 21 A. I THINK 14, 12. I DON'T REMEMBER, HONESTLY.

09:14AM 22 Q. OKAY.

09:14AM 23 AND WHAT WAS THE LARGEST AMOUNT OF METHAMPHETAMINE

09:14AM 24 THAT YOU RECEIVED DURING THAT TIME PERIOD FROM RENE SALAZAR AT

09:14AM 25 ONE TIME?

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09:14AM 1 A. AT ONE TIME? AN OUNCE.

09:14AM 2 Q. AND WHEN YOU WOULD RECEIVE IT AT HIS HOUSE, HE WOULD  
09:14AM 3 FRONT IT TO YOU. WOULD YOU ALSO BRING BACK THE MONEY TO HIM,  
09:14AM 4 TO RENE SALAZAR?

09:14AM 5 A. I DIDN'T ALWAYS GET IT FROM HIM, EITHER, OR BRING THE  
09:14AM 6 MONEY TO HIM. 80 PERCENT OF THE TIME I WAS GOING THROUGH  
09:14AM 7 CHARLIE.

09:14AM 8 Q. AND WHO IS CHARLIE?

09:14AM 9 A. HE WAS HIS NEIGHBOR.

09:14AM 10 MR. GONZALEZ: CAN WE HAVE GOVERNMENT'S EXHIBIT 123,  
09:14AM 11 PLEASE?

09:14AM 12 Q. DO YOU RECOGNIZE WHO IS DEPICTED ON THE SCREEN THERE?

09:14AM 13 A. YES, SIR.

09:14AM 14 Q. IS THAT CHARLIE, THE CHARLIE YOU ARE REFERRING TO?

09:14AM 15 A. YES, SIR.

09:15AM 16 Q. OKAY. AND YOU SAY HE WAS RENE SALAZAR'S NEIGHBOR.

09:15AM 17 CORRECT?

09:15AM 18 A. [MOVING HEAD UP AND DOWN]

09:15AM 19 Q. AND WAS HE RENE SALAZAR'S NEIGHBOR WHEN HE WAS LIVING  
09:15AM 20 IN THE APARTMENT BEHIND HIS SISTER'S HOUSE?

09:15AM 21 A. NO, IT WAS ON DAY STREET.

09:15AM 22 Q. ON DAY STREET?

09:15AM 23 A. YES.

09:15AM 24 Q. SO DID RENE SALAZAR MOVE FROM THE APARTMENT BEHIND HIS  
09:15AM 25 SISTER'S HOUSE OVER TO DAY STREET?

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09:15AM 1 A. I THINK HE WAS IN THE PROCESS IN JUNE OF MOVING TO DAY  
09:15AM 2 STREET. I'M NOT EXACTLY SURE WHEN HE MOVED TO DAY STREET,  
09:15AM 3 BUT I THINK HE WAS IN THE PROCESS OF DOING ALL THAT ABOUT  
09:15AM 4 THAT TIME.

09:15AM 5 Q. BUT EVENTUALLY HE DID MOVE OVER TO DAY STREET?

09:15AM 6 A. YES.

09:15AM 7 Q. AND CHARLIE QUIROLO WAS HIS NEIGHBOR?

09:15AM 8 A. YES.

09:15AM 9 Q. AND DO YOU RECALL WHO WAS LIVING WITH HIM ON DAY STREET?

09:15AM 10 A. A GIRL NAMED ANDREA.

09:15AM 11 Q. SO THAT WAS HIS GIRLFRIEND AT THE TIME HE WAS LIVING ON  
09:15AM 12 DAY STREET?

09:15AM 13 A. YES.

09:15AM 14 Q. SO HE WAS NO LONGER WITH YOUR SISTER?

09:15AM 15 A. NO.

09:15AM 16 Q. AND WERE YOU PICKING UP THE SAME QUANTITIES FROM  
09:15AM 17 CHARLIE QUIROLO?

09:15AM 18 A. YES. UNTIL AFTER RENE WENT TO JAIL.

09:15AM 19 Q. OKAY. BUT LET'S STICK WITH THAT TIME PERIOD. WHEN YOU  
09:15AM 20 NEEDED DRUGS, WHO WOULD YOU CALL?

09:15AM 21 A. I WOULD CALL RENE.

09:16AM 22 Q. AND WOULD HE THEN SEND YOU OVER TO CHARLIE TO PICK IT  
09:16AM 23 UP?

09:16AM 24 A. YES.

09:16AM 25 Q. AND THEN AFTER YOU SOLD THE DRUGS, WOULD YOU EITHER

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09:16AM 1 BRING THE MONEY DIRECTLY TO RENE OR TO CHARLIE, OR BOTH?

09:16AM 2 A. BOTH.

09:16AM 3 Q. OKAY. BUT IN ORDER TO PLACE AN ORDER, YOU WENT THROUGH

09:16AM 4 RENE?

09:16AM 5 A. YES.

09:16AM 6 Q. OKAY.

09:16AM 7 AT SOME POINT DURING YOUR DEALINGS WITH RENE

09:16AM 8 SALAZAR, DID YOU FIND OUT THAT HE HAD A PARTNER IN THE DRUG

09:16AM 9 BUSINESS?

09:16AM 10 A. YEAH.

09:16AM 11 Q. AND WHO WAS THAT?

09:16AM 12 A. KENNETH HOUSE.

09:16AM 13 Q. AND DID YOU KNOW KENNETH HOUSE BEFORE THAT DAY?

09:16AM 14 A. YES. I'VE KNOWN HIM FOREVER.

09:16AM 15 Q. OKAY. AND DO YOU KNOW WHAT HIS NICKNAME IS? WHAT DOES

09:16AM 16 HE GO BY?

09:16AM 17 A. NO, I DIDN'T KNOW UNTIL AFTER HE WAS WORKING WITH RENE.

09:16AM 18 Q. WHAT DID YOU FIND OUT TO BE HIS NICKNAME?

09:16AM 19 A. FLIP.

09:16AM 20 Q. BUT YOU HAD ALL YOUR DEALINGS WITH RENE SALAZAR.

09:17AM 21 CORRECT?

09:17AM 22 A. YES.

09:17AM 23 Q. NOW, DURING THE TIME PERIOD THAT YOU ARE DEALING WITH

09:17AM 24 RENE SALAZAR, ARE YOU INTRODUCED TO AN INDIVIDUAL BY THE NAME

09:17AM 25 OF MIKE CAMACHO?

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09:17AM 1 A. YES.

09:17AM 2 Q. WHO INTRODUCES YOU TO MIKE CAMACHO?

09:17AM 3 A. RENE DID.

09:17AM 4 Q. OKAY. AND WHY WAS THAT DONE? WHY DID HE INTRODUCE YOU

09:17AM 5 TO MIKE CAMACHO?

09:17AM 6 A. HE WAS GOING--RENE WAS FIXING TO GO TO PRISON.

09:17AM 7 Q. AND WHY DID HE WANT TO INTRODUCE YOU TO MIKE CAMACHO

09:17AM 8 IF HE WAS GOING TO PRISON?

09:17AM 9 A. I'M NOT REAL SURE WHY HE WANTED ME TO. I'M THINKING SO

09:17AM 10 I COULD GO THROUGH MIKE.

09:17AM 11 Q. DID HE REPRESENT THAT CAMACHO WAS HIS SOURCE OF SUPPLY,

09:17AM 12 THE PERSON THAT WAS SUPPLYING HIM?

09:17AM 13 A. NO. HE JUST SAID THAT HE WANTED ME TO MEET SOMEBODY.

09:17AM 14 Q. NOW, ARE YOU FAMILIAR WITH AN INDIVIDUAL BY THE NAME

09:17AM 15 OF BOBBY JAMES?

09:17AM 16 A. YES.

09:17AM 17 Q. AND WHAT WAS BOBBY JAMES' ROLE IN ALL OF THIS?

09:17AM 18 A. TOWARDS THE END OF ME SELLING METHAMPHETAMINES,

09:18AM 19 HE WAS ONE OF THE ONES THAT WOULD BRING IT TO ME.

09:18AM 20 Q. OKAY. SO WAS HE WORKING FOR RENE SALAZAR?

09:18AM 21 A. I'M NOT--I DON'T KNOW.

09:18AM 22 Q. OKAY.

09:18AM 23 NOW, DURING YOUR TIME PERIOD THAT YOU ARE DEALING

09:18AM 24 WITH RENE AND YOU KNOW THAT FLIP, OR KENNETH HOUSE, WAS HIS

09:18AM 25 PARTNER, DID YOU EVER HEAR RENE MENTION WHO WAS GOING DOWN

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09:18AM 1 TO PICK UP THE METHAMPHETAMINE?

09:18AM 2 A. HE WOULD SAY ONCE IN A WHILE, "IT'LL BE HERE IN A  
09:18AM 3 LITTLE WHILE. FLIP WENT TO GO GET IT."

09:18AM 4 Q. SO THAT INDICATED TO YOU THAT KENNETH HOUSE WAS PICKING  
09:18AM 5 IT UP?

09:18AM 6 A. YEAH.

09:18AM 7 Q. NOW, WAS THERE A POINT WHERE YOU WERE DEALING WITH  
09:18AM 8 CHARLIE AND HE STARTED MESSING UP THE DELIVERY OR THE  
09:18AM 9 DISTRIBUTION?

09:18AM 10 A. HE WAS MESSING UP THE MONEY AND THE METHAMPHETAMINES.  
09:18AM 11 SO CAMACHO TOOK HIM OFF OF IT.

09:18AM 12 Q. OKAY. SO YOU WERE NO LONGER DEALING WITH CHARLIE?

09:18AM 13 A. YEAH.

09:18AM 14 Q. WHO WERE YOU DEALING WITH?

09:18AM 15 A. AT THAT POINT, CAMACHO CALLED ME AND ASKED ME IF I WAS  
09:18AM 16 COMFORTABLE GOING THROUGH ANDREA OR BOBBY JAMES.

09:19AM 17 Q. OKAY. AND DID YOU DO THAT?

09:19AM 18 A. YES, SIR.

09:19AM 19 Q. SO YOU STARTED GOING THROUGH THEM?

09:19AM 20 A. YES. THEY WOULD BRING IT TO ME.

09:19AM 21 Q. SO, BASICALLY, YOU AND BOBBY JAMES AND ANDREA WERE  
09:19AM 22 PUTTING YOUR MONEY TOGETHER?

09:19AM 23 A. NO. I ALWAYS GOT IT FRONDED.

09:19AM 24 Q. OKAY. BUT WOULD YOU SEND YOUR MONEY BACK THROUGH THEM?

09:19AM 25 A. NO, SIR.

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09:19AM 1 Q. YOU PAID CAMACHO DIRECTLY?

09:19AM 2 A. YES.

09:19AM 3 Q. OKAY.

09:19AM 4 NOW, YOU SAID YOU STARTED IN JUNE OF 2011, IS THAT

09:19AM 5 CORRECT?

09:19AM 6 A. I STARTED IN FEBRUARY 2011, BUT JUNE 2011 I STARTED

09:19AM 7 WORKING WITH RENE.

09:19AM 8 Q. OKAY. AND UNTIL WHAT TIME DID YOU DISTRIBUTE

09:19AM 9 METHAMPHETAMINE?

09:19AM 10 A. I QUIT AT THE BEGINNING--I QUIT RIGHT AROUND THE

09:19AM 11 BEGINNING OF NOVEMBER/THE END OF OCTOBER OF 2011.

09:19AM 12 Q. NOW, CONSIDERING THAT TIME PERIOD OF JUNE THROUGH

09:20AM 13 NOVEMBER, IF YOU HAD TO ESTIMATE THE AMOUNT OF METHAMPHETAMINE

09:20AM 14 THAT YOU RECEIVED FROM RENE SALAZAR, WHAT WOULD THAT AMOUNT BE?

09:20AM 15 A. FROM RENE?

09:20AM 16 Q. YES.

09:20AM 17 A. IT WOULD BE ABOUT SIX, EIGHT OUNCES. SIX TO EIGHT

09:20AM 18 OUNCES.

09:20AM 19 Q. OKAY.

09:20AM 20 NOW, FROM DURING THE TIME PERIOD THAT YOU WERE

09:20AM 21 DEALING WITH CHARLIE, WHAT WOULD THAT AMOUNT BE?

09:20AM 22 A. ABOUT THREE TO FOUR.

09:20AM 23 Q. AND DURING THE TIME THAT YOU WERE DEALING WITH ANDREA,

09:20AM 24 BOBBY JAMES AND MIKE CAMACHO, WHAT WOULD THAT AMOUNT BE?

09:20AM 25 A. ABOUT 16 TO 18.

1501

09:20AM 1 Q. SO ANYWHERE FROM 25 TO 30 OUNCES DURING THAT TIME

09:20AM 2 PERIOD?

09:20AM 3 A. ROUNDABOUT.

09:20AM 4 Q. AND YOU INDICATED THAT IT WAS JUST ABOUT EVERY OTHER  
09:20AM 5 DAY THAT YOU WERE PICKING UP AND DISTRIBUTING?

09:20AM 6 A. YES. UNTIL I GOT INTO BIGGER QUANTITIES. AND THEN  
09:20AM 7 IT WAS--I WAS PICKING UP LESS. I WAS PICKING UP, LIKE, ONCE  
09:21AM 8 A WEEK.

09:21AM 9 Q. AND THAT'S WHEN YOU GOT UP TO AN OUNCE?

09:21AM 10 A. UP TO TWO OUNCES.

09:21AM 11 Q. SO TWO OUNCES WAS THE LARGEST QUANTITY THAT YOU GOT UP  
09:21AM 12 TO?

09:21AM 13 A. YES.

09:21AM 14 Q. AND THAT'S TWO OUNCES PER WEEK?

09:21AM 15 A. YES.

09:21AM 16 Q. OKAY.

09:21AM 17 NOW, AFTER YOUR ARREST ON THE FEDERAL CHARGES, YOU  
09:21AM 18 AGREED TO COOPERATE. CORRECT?

09:21AM 19 A. YES.

09:21AM 20 Q. AND YOU STARTED COOPERATING AND PROVIDING INFORMATION.  
09:21AM 21 CORRECT?

09:21AM 22 A. YES.

09:21AM 23 Q. AND EVEN FURTHER THAN THAT, YOU AGREED TO WORK AS A  
09:21AM 24 CONFIDENTIAL INFORMANT FOR THE AGENTS?

09:21AM 25 A. YES.

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09:21AM 1 Q. AND YOU WORKED AS A CONFIDENTIAL INFORMANT FOR THE  
09:21AM 2 AGENTS?

09:21AM 3 A. YES.

09:21AM 4 Q. NOW, HAVE I, MS. BATSON OR ANY OF THE AGENTS PROMISED  
09:21AM 5 YOU ANYTHING SPECIFIC IN REGARDS TO YOUR COOPERATION AS A  
09:21AM 6 CONFIDENTIAL INFORMANT?

09:21AM 7 A. NO.

09:21AM 8 Q. HAVE I TOLD YOU THAT BECAUSE OF BEING A CONFIDENTIAL  
09:21AM 9 INFORMANT, YOU SHOULD EXPECT TO RECEIVE A CERTAIN SENTENCE?

09:21AM 10 A. NO.

09:21AM 11 Q. HAVE I TOLD YOU BECAUSE OF YOUR COOPERATION AS A  
09:21AM 12 CONFIDENTIAL INFORMANT, YOU SHOULD EXPECT THE JUDGE TO GIVE  
09:21AM 13 YOU A CERTAIN SENTENCE?

09:22AM 14 A. NO, SIR.

09:22AM 15 Q. HAVE ANY GUARANTEES OR PROMISES BEEN MADE TO YOU  
09:22AM 16 BECAUSE YOU ARE WORKING AS A CONFIDENTIAL INFORMANT?

09:22AM 17 A. NO, SIR.

09:22AM 18 Q. ALL RIGHT.

09:22AM 19 NOW, YOU INDICATED THAT YOU PLED GUILTY TO THIS  
09:22AM 20 OFFENSE, IS THAT CORRECT?

09:22AM 21 A. YES.

09:22AM 22 Q. AND WAS THAT BY WAY OF A PLEA AGREEMENT? DID YOU HAVE  
09:22AM 23 A PLEA AGREEMENT IN PLACE?

09:22AM 24 A. YEAH.

09:22AM 25 Q. OKAY. CAN YOU TURN TO TAB 73 IN THAT NOTEBOOK IN FRONT

1503

09:22AM 1 **OF YOU?**

09:22AM 2 **A. 73?**

09:22AM 3 **Q. YES. I'M SORRY. I MISDIRECTED YOU. CAN YOU TURN TO**

09:22AM 4 **TAB 100? SORRY ABOUT THAT.**

09:22AM 5 **A. THAT'S OKAY.**

09:23AM 6 **Q. DO YOU RECOGNIZE THAT DOCUMENT?**

09:23AM 7 **A. YES, SIR.**

09:23AM 8 **Q. WHAT DO YOU RECOGNIZE IT TO BE?**

09:23AM 9 **A. MY PLEA AGREEMENT.**

09:23AM 10 **Q. OKAY. CAN YOU REVIEW THAT PLEA AGREEMENT, NOT**

09:23AM 11 **NECESSARILY READING IT, BUT GOING THROUGH IT AND MAKING SURE**

09:23AM 12 **THAT IT HASN'T BEEN CHANGED IN ANY WAY SINCE YOU LAST SAW IT.**

09:23AM 13 **A. YES, SIR. YES, IT'S THE ONE I READ AND SIGNED.**

09:24AM 14 **Q. HAS IT BEEN CHANGED OR ALTERED IN ANY WAY SINCE YOU SAW**

09:24AM 15 **IT LAST?**

09:24AM 16 **A. I DON'T THINK SO.**

09:24AM 17 **MR. GONZALEZ: YOUR HONOR, AT THIS TIME WE WOULD**

09:24AM 18 **OFFER GOVERNMENT'S EXHIBIT 100 INTO EVIDENCE.**

09:24AM 19 **MR. WHALEN: NO OBJECTION.**

09:24AM 20 **MR. KEMP: NO OBJECTION.**

09:24AM 21 **MR. PETRAZIO: NO OBJECTION.**

09:24AM 22 **THE COURT: GOVERNMENT'S EXHIBIT 100 IS ADMITTED.**

09:24AM 23 **MR. GONZALEZ: MAY WE PUBLISH?**

09:24AM 24 **THE COURT: YES.**

09:24AM 25 **MR. GONZALEZ:**

1504

09:24AM 1 Q. NOW, MS. STEWART, ON THE SCREEN THERE IS "UNITED STATES  
09:24AM 2 VERSUS MELISSA RENEE STEWART PLEA AGREEMENT." IS THAT THE  
09:24AM 3 SAME DOCUMENT THAT YOU ARE LOOKING AT ON THE WITNESS STAND?

09:24AM 4 A. YES, SIR.

09:24AM 5 Q. IT'S THE SAME DOCUMENT THAT YOU INDICATED HAD NOT BEEN  
09:24AM 6 CHANGED SINCE YOU LAST SAW IT. CORRECT?

09:24AM 7 A. YES, SIR.

09:24AM 8 Q. ALL RIGHT.

09:24AM 9 NOW, IN PARAGRAPH 2, IT STATES THAT YOU AGREE TO  
09:24AM 10 WAIVE CERTAIN RIGHTS AND AGREE TO PLEAD GUILTY TO COUNT 1 OF  
09:25AM 11 THE SECOND SUPERSEDING INDICTMENT, WHICH CHARGES A VIOLATION  
09:25AM 12 OF 21 USC 846, CONSPIRACY TO POSSESS WITH THE INTENT TO  
09:25AM 13 MANUFACTURE AND DISTRIBUTE METHAMPHETAMINE. IS THAT WHAT  
09:25AM 14 YOU PLED GUILTY TO?

09:25AM 15 A. YES.

09:25AM 16 Q. AND THAT'S WHAT YOU TOOK RESPONSIBILITY FOR?

09:25AM 17 A. YES.

09:25AM 18 Q. OKAY.

09:25AM 19 NOW, IN PARAGRAPH 5(A), YOU AGREED IN YOUR PLEA  
09:25AM 20 AGREEMENT THAT THE BASE OFFENSE LEVEL UNDER UNITED STATES  
09:25AM 21 SENTENCING GUIDELINE SECTION 2D1.1 IS 32 BASED ON THE  
09:25AM 22 POSSESSION WITH INTENT TO DISTRIBUTE AT LEAST 500 GRAMS BUT  
09:25AM 23 LESS THAN 1.5 KILOGRAMS OF A MIXTURE OR SUBSTANCE CONTAINING  
09:25AM 24 A DETECTABLE AMOUNT OF METHAMPHETAMINE. AND IS THAT WHAT YOU  
09:25AM 25 AGREED TO?

1505

09:25AM 1 A. YES, SIR.

09:25AM 2 Q. AND THAT'S WHAT YOU PLED GUILTY TO?

09:25AM 3 A. YES, SIR.

09:25AM 4 Q. ALL RIGHT.

09:25AM 5 NOW, IN PARAGRAPH 7, IT STATES THAT "THE DEFENDANT

09:25AM 6 SHALL GIVE TRUTHFUL AND COMPLETE INFORMATION AND/OR TESTIMONY

09:26AM 7 CONCERNING THE DEFENDANT'S PARTICIPATION IN THE OFFENSE OF

09:26AM 8 CONVICTION AND KNOWLEDGE OF OTHER CRIMINAL ACTIVITIES."

09:26AM 9 DID YOU UNDERSTAND THAT SECTION?

09:26AM 10 A. YES, SIR.

09:26AM 11 Q. AND, IN FACT, HAVE YOU ALREADY DONE THAT?

09:26AM 12 A. YES, SIR.

09:26AM 13 Q. AND TODAY YOU ARE HERE TESTIFYING BECAUSE YOU

09:26AM 14 UNDERSTOOD THAT, IF CALLED UPON, YOU HAD TO GIVE TRUTHFUL

09:26AM 15 AND COMPLETE INFORMATION?

09:26AM 16 A. YES, SIR.

09:26AM 17 Q. AND YOU'VE ALSO TALKED ABOUT OTHER CRIMINAL ACTIVITIES

09:26AM 18 AND ARE WORKING AS A CONFIDENTIAL INFORMANT IN REGARDS TO THAT.

09:26AM 19 CORRECT?

09:26AM 20 A. YES, SIR.

09:26AM 21 Q. OKAY.

09:26AM 22 NOW, IT GOES ON TO SAY, "THE DEFENDANT SHALL NOT

09:26AM 23 TAKE ANY ACTIONS THAT WOULD OBSTRUCT THE GOVERNMENT'S

09:26AM 24 INVESTIGATION INTO THE OFFENSE OF CONVICTION OR THE OTHER

09:26AM 25 CRIMINAL ACTIVITIES OF WHICH THE DEFENDANT HAS KNOWLEDGE."

1506

09:26AM 1 DID YOU UNDERSTAND THAT?

09:26AM 2 A. YES, SIR.

09:26AM 3 Q. AND THEN IT GOES ON TO SAY THAT "THE DEFENDANT  
09:26AM 4 UNDERSTANDS THAT INTENTIONALLY PROVIDING FALSE INFORMATION OR  
09:26AM 5 TESTIMONY TO IMPLICATE AN INNOCENT PERSON IN THE COMMISSION OF  
09:26AM 6 A CRIME OR TO PROTECT A GUILTY PERSON AND/OR EXAGGERATING THE  
09:26AM 7 INVOLVEMENT OF ANY PERSON IN A CRIME IN ORDER TO APPEAR  
09:26AM 8 COOPERATIVE WILL BE A MATERIAL VIOLATION OF THIS AGREEMENT."

09:26AM 9 DID YOU UNDERSTAND THAT?

09:26AM 10 A. YES.

09:26AM 11 Q. DID YOU UNDERSTAND THAT YOU COULDN'T EXAGGERATE AND  
09:26AM 12 THAT YOU COULDN'T PROTECT ANYBODY?

09:27AM 13 A. YES.

09:27AM 14 Q. AND THAT YOU HAD TO BE COMPLETELY TRUTHFUL?

09:27AM 15 A. YES.

09:27AM 16 Q. OKAY.

09:27AM 17 NOW, TOWARDS THE BOTTOM, WHERE IT STARTS WITH THE  
09:27AM 18 WORD "FAILURE," IT SAYS, "FAILURE TO COMPLY WITH THIS SECTION  
09:27AM 19 CAN RESULT IN PROSECUTION FOR THE CHARGES IDENTIFIED IN  
09:27AM 20 PARAGRAPH 2 ABOVE AND FOR ANY OTHER FEDERAL OFFENSES THE  
09:27AM 21 DEFENDANT MAY HAVE COMMITTED." DID YOU UNDERSTAND THAT?

09:27AM 22 A. YES.

09:27AM 23 Q. THAT IF YOU TOOK THE STAND AND LIED, YOU COULD BE  
09:27AM 24 CHARGED WITH PERJURY?

09:27AM 25 A. YES.

1507

09:27AM 1 Q. AND THAT THE TIME FOR THE PERJURY WOULD BE STACKED ON  
09:27AM 2 THE DRUG OFFENSE?

09:27AM 3 A. YES.

09:27AM 4 Q. AND THAT YOU COULD ALSO BE CHARGED FOR OTHER FEDERAL  
09:27AM 5 VIOLATIONS, SUCH AS OBSTRUCTION OF JUSTICE?

09:27AM 6 A. YES.

09:27AM 7 Q. OKAY. AND YOU UNDERSTOOD THAT?

09:27AM 8 A. YES, SIR.

09:27AM 9 Q. THEN, FINALLY, IN THAT SECTION IT TALKS ABOUT "UPON  
09:27AM 10 SUCH FAILURE, THE GOVERNMENT MAY USE ANY OF THE DEFENDANT'S  
09:27AM 11 STATEMENTS OR LEADS DERIVED THEREFROM AGAINST THE DEFENDANT  
09:27AM 12 IN ANY PROCEEDING." SO DID YOU UNDERSTAND THAT YOUR OWN WORDS  
09:27AM 13 COULD BE USED AGAINST YOU IF YOU FAILED TO COMPLY WITH THIS  
09:27AM 14 PLEA AGREEMENT?

09:27AM 15 A. YES.

09:27AM 16 Q. OR IF YOU COMMITTED PERJURY OR IF YOU OBSTRUCTED  
09:28AM 17 JUSTICE, WE COULD USE WHAT YOU'VE TESTIFIED TO TODAY AND ANY  
09:28AM 18 STATEMENTS THAT YOU HAVE PROVIDED IN YOUR COOPERATION WITH  
09:28AM 19 AGENTS?

09:28AM 20 A. YES.

09:28AM 21 Q. AND YOU UNDERSTOOD THAT?

09:28AM 22 A. YES, SIR.

09:28AM 23 Q. THE NEXT SECTION, PARAGRAPH 8, IS ENTITLED "SUBSTANTIAL  
09:28AM 24 ASSISTANCE," AND IT SAYS, "IF, IN ITS SOLE DISCRETION, THE  
09:28AM 25 GOVERNMENT DETERMINES THAT THE DEFENDANT HAS PROVIDED

1508

09:28AM 1 SUBSTANTIAL ASSISTANCE IN THE INVESTIGATION OR PROSECUTION  
09:28AM 2 OF OTHERS, THE GOVERNMENT WILL FILE A MOTION FOR DOWNWARD  
09:28AM 3 DEPARTURE PURSUANT TO UNITED STATES SENTENCING GUIDELINE  
09:28AM 4 SECTION 5K.1 OR A MOTION FOR REDUCTION OF SENTENCE PURSUANT  
09:28AM 5 TO FEDERAL CRIMINAL RULE OF PROCEDURE 35(B). THE DEFENDANT'S  
09:28AM 6 COOPERATION DOES NOT AUTOMATICALLY REQUIRE THE GOVERNMENT  
09:28AM 7 TO REQUEST A DOWNWARD DEPARTURE OR A REDUCTION IN SENTENCE,  
09:28AM 8 AND THE TIME FOR FILING SUCH A MOTION WILL BE DETERMINED BY  
09:28AM 9 THE GOVERNMENT." SO DID YOU UNDERSTAND THAT EVEN WITH YOUR  
09:28AM 10 COOPERATION AS A CONFIDENTIAL INFORMANT AND YOUR TESTIMONY  
09:28AM 11 HERE TODAY, YOU ARE NOT GUARANTEED THAT THE GOVERNMENT IS  
09:28AM 12 GOING TO FILE A MOTION FOR DOWNWARD DEPARTURE ON YOUR BEHALF?

09:28AM 13 A. YES.

09:28AM 14 Q. NOW, ARE YOU HOPING THAT THE GOVERNMENT DOES THAT?

09:28AM 15 A. YES.

09:28AM 16 Q. BUT HAVE I OR MS. BATSON OR THE AGENTS WORKING ON THIS  
09:29AM 17 CASE EVER PROMISED YOU THAT?

09:29AM 18 A. NO.

09:29AM 19 Q. HAVE WE GUARANTEED THAT TO YOU?

09:29AM 20 A. NO.

09:29AM 21 Q. AND THEN, IN BOLD PRINT, IN THIS PARAGRAPH IT STATES,  
09:29AM 22 "IT IS ENTIRELY WITHIN THE COURT'S DISCRETION AS TO WHAT, IF  
09:29AM 23 ANY, REDUCTION IN SENTENCE THE DEFENDANT WILL RECEIVE." SO,  
09:29AM 24 ULTIMATELY, WHO DECIDES YOUR SENTENCE?

09:29AM 25 A. THE JUDGE.

1509

09:29AM 1 Q. JUDGE SCHELL DOES?

09:29AM 2 A. YES.

09:29AM 3 Q. OKAY. HAVE I OR MS. BATSON EVER PROMISED YOU A

09:29AM 4 SPECIFIC SENTENCE IN THIS CASE?

09:29AM 5 A. NO.

09:29AM 6 Q. HAVE WE PROMISED YOU A SPECIFIC SENTENCE IN THIS CASE

09:29AM 7 IN EXCHANGE FOR YOUR TESTIMONY HERE TODAY?

09:29AM 8 A. [MOVING HEAD SIDE TO SIDE]

09:29AM 9 Q. HAVE WE GUARANTEED YOU A SPECIFIC REDUCTION OF SENTENCE

09:29AM 10 IN THIS CASE?

09:29AM 11 A. NO, SIR.

09:29AM 12 MR. GONZALEZ: ALL RIGHT. THANK YOU, MA'AM.

09:29AM 13 I PASS THE WITNESS.

09:29AM 14 THE COURT: MR. KEMP?

09:29AM 15 CROSS-EXAMINATION OF MELISSA RENEE STEWART ON BEHALF OF THE

09:29AM 16 DEFENDANT SALAZAR

09:29AM 17 MR. KEMP:

09:29AM 18 Q. GOOD MORNING, MS. STEWART.

09:29AM 19 A. HI.

09:29AM 20 Q. HOW MUCH OF A DOWNWARD DEPARTURE ARE YOU HOPING TO GET?

09:29AM 21 A. I DON'T KNOW.

09:29AM 22 Q. JUST AS MUCH AS YOU CAN GET. RIGHT?

09:29AM 23 A. YES, SIR.

09:29AM 24 Q. WITH A LEVEL 32, I'M NOT SURE ABOUT WHAT YOUR CRIMINAL

09:29AM 25 HISTORY IS, BUT YOU ARE PROBABLY LOOKING AT SOME PRISON TIME,

1510

09:30AM 1 ARE YOU NOT?

09:30AM 2 A. YES.

09:30AM 3 Q. AND THE FEWER DAYS THAT YOU CAN ACTUALLY SPEND

09:30AM 4 INCARCERATED, THE BETTER. CORRECT?

09:30AM 5 A. YES.

09:30AM 6 Q. YOU SAID YOU HAD TWO KIDS?

09:30AM 7 A. YES, SIR.

09:30AM 8 Q. AND HOW OLD ARE THEY?

09:30AM 9 A. 14 AND 13.

09:30AM 10 Q. SO YOU ARE CERTAINLY GOING TO DO EVERYTHING YOU CAN

09:30AM 11 DO TO WATCH THEM GRADUATE FROM HIGH SCHOOL, AREN'T YOU?

09:30AM 12 A. OH, YEAH.

09:30AM 13 Q. NOW, HOW LONG HAVE YOU BEEN WORKING AS AN INFORMANT,

09:30AM 14 AGAIN?

09:30AM 15 A. JUST SINCE I'VE BEEN OUT OF JAIL. I'M NOT SURE.

09:30AM 16 Q. SINCE YOU GOT OUT OF JAIL FOR THIS PARTICULAR OFFENSE?

09:30AM 17 A. YES.

09:30AM 18 Q. AND WHEN WAS THAT?

09:30AM 19 A. MARCH. I GOT ARRESTED THE BEGINNING OF MARCH, AND

09:30AM 20 I STAYED IN FOR, I THINK, TWO AND A HALF WEEKS.

09:30AM 21 Q. AND THAT'S MARCH OF 2012. CORRECT?

09:30AM 22 A. YES.

09:30AM 23 Q. NOW LET ME GO BACK. YOU SAID YOU STARTED IN FEBRUARY

09:30AM 24 OF 2011, AND YOU SAID YOUR SOURCE OF SUPPLY, BUT I DIDN'T CATCH

09:30AM 25 THE NAME. WHO WAS THAT?

1511

09:30AM 1 A. HIS NAME WAS TERRELL.

09:30AM 2 Q. TERRELL? IS HE A CODEFENDANT IN THIS CASE?

09:30AM 3 A. NO.

09:30AM 4 Q. NOW, TO YOUR KNOWLEDGE, IS HE STILL OUT THERE DEALING?

09:30AM 5 A. NO. HE'S IN PRISON.

09:31AM 6 Q. NOW, YOU MENTIONED THAT YOU GOT IN TROUBLE IN APRIL.

09:31AM 7 A. YES.

09:31AM 8 Q. WHAT HAPPENED IN APRIL?

09:31AM 9 A. I GOT PULLED OVER, AND I HAD SOME PILLS ON ME, AND I

09:31AM 10 HAD SOME TEXT MESSAGES COMING THROUGH ON MY PHONE, AND THEY

09:31AM 11 HAD REASON TO BELIEVE I WAS SELLING METH, AND THEY WENT INTO

09:31AM 12 MY HOUSE.

09:31AM 13 Q. DID THEY FIND ANY METH IN YOUR HOUSE?

09:31AM 14 A. YES, SIR.

09:31AM 15 Q. HOW MUCH WAS THERE?

09:31AM 16 A. HALF-OUNCE.

09:31AM 17 Q. WAS THAT SOME YOU HAD GOTTEN FROM TERRELL, I ASSUME?

09:31AM 18 A. YES.

09:31AM 19 Q. WHAT KIND OF PILLS DID YOU HAVE ON YOU?

09:31AM 20 A. XANAXES.

09:31AM 21 Q. AND YOU DIDN'T HAVE A PRESCRIPTION FOR THAT?

09:31AM 22 A. NO, SIR.

09:31AM 23 Q. NOW, DO YOU USE METHAMPHETAMINES?

09:31AM 24 A. NO, I DON'T, SIR.

09:31AM 25 Q. HAVE YOU EVER?

1512

09:31AM 1 A. YES, I HAVE.

09:31AM 2 Q. IS IT SAFE TO SAY THAT PILLS ARE KIND OF YOUR DRUG OF  
09:31AM 3 CHOICE?

09:31AM 4 A. NO. WEED.

09:31AM 5 Q. WERE YOU SELLING WEED AS WELL?

09:31AM 6 A. NO. I TOOK XANAXES EVERY ONCE IN A WHILE, BUT, NO,

09:31AM 7 I'D RATHER SMOKE WEED.

09:31AM 8 Q. YOU GOT IN TROUBLE IN APRIL, AND YOU SAID THAT YOU

09:31AM 9 DIDN'T DO ANYTHING ELSE UNTIL JUNE. YOU JUST KIND OF GOT

09:31AM 10 SCARED, I GUESS, AND DECIDED TO CLEAN UP?

09:32AM 11 A. YEAH. AND DIDN'T HAVE THE MONEY OR ANYTHING, SO...

09:32AM 12 Q. SO WHAT DREW YOU BACK IN IN JUNE?

09:32AM 13 A. I NEEDED THE MONEY. I NEEDED TO PAY BILLS.

09:32AM 14 Q. WERE YOU WORKING AT THE TIME?

09:32AM 15 A. I HAD JUST GOT A JOB, YEAH.

09:32AM 16 Q. BUT THIS WAS JUST A MEANS OF YOU MAKING ENDS MEET?

09:32AM 17 A. YES, SIR.

09:32AM 18 Q. NOW, YOU SAID YOU MET RENE THROUGH YOUR SISTER, IS THAT

09:32AM 19 RIGHT?

09:32AM 20 A. YES.

09:32AM 21 Q. AND THAT WAS IN JUNE OF 2011?

09:32AM 22 A. NO, I DON'T REALLY KNOW WHEN THEY GOT TOGETHER. I

09:32AM 23 THINK IT WAS 2010.

09:32AM 24 Q. WELL, BUT YOU MET RENE SALAZAR IN JUNE OF 2011?

09:32AM 25 OR DID YOU KNOW HIM PRIOR?

1513

09:32AM 1 A. I KNEW HIM WHEN HIM AND SHERRY FIRST GOT TOGETHER.

09:32AM 2 Q. DID YOU KNOW HIM BEFORE THAT OR JUST WHEN THEY GOT

09:32AM 3 TOGETHER?

09:32AM 4 A. I JUST KNEW HIM--BEFORE THEY GOT TOGETHER.

09:32AM 5 Q. NOW, YOU SAID THAT YOU HAD STARTED--YOU BEGAN WITH A

09:32AM 6 QUARTER OF AN OUNCE A DAY AND THEN GRADUALLY WORKED YOUR WAY

09:32AM 7 UP. WAS THAT SOMETHING THAT YOU STARTED INITIALLY EVERY DAY,

09:32AM 8 OR WERE YOU KIND OF WORKING INTO IT EVERY OTHER DAY?

09:32AM 9 A. WELL, I WOULD ONLY WORK, LIKE, WHILE THE KIDS WERE AT

09:33AM 10 SCHOOL, OR WHATEVER. SO ON THE WEEKENDS I DIDN'T DO ANYTHING.

09:33AM 11 IT WAS MAINLY JUST FIVE DAYS A WEEK. SO IT WAS JUST--

09:33AM 12 I GRADUATED SLOWLY UP.

09:33AM 13 Q. AND YOU SAID THAT YOU THOUGHT THAT RENE SALAZAR WAS

09:33AM 14 MOVING TO DAY STREET AROUND THIS SAME TIME WHEN YOU STARTED?

09:33AM 15 A. YEAH.

09:33AM 16 Q. WELL, NOW, AT THAT TIME, YOUR SISTER'S AND HIS

09:33AM 17 RELATIONSHIP HAD CEASED TO EXIST, IS THAT RIGHT?

09:33AM 18 A. PRETTY MUCH.

09:33AM 19 Q. WHY DID THAT OCCUR? DO YOU KNOW?

09:33AM 20 A. I HAVE NO CLUE.

09:33AM 21 Q. NOW, FROM JUNE 2011 THROUGH, I GUESS, AUGUST OF 2011,

09:33AM 22 WHEN RENE SALAZAR WENT INTO STATE CUSTODY, YOU SAID THAT 80

09:33AM 23 PERCENT OF THE TIME YOU WERE GETTING YOUR PRODUCT FROM CHARLIE,

09:33AM 24 IS THAT RIGHT?

09:33AM 25 A. YES, SIR.

1514

09:33AM 1 Q. THROUGH THAT TIME, HOW MANY DIFFERENT TIMES DID YOU  
09:33AM 2 DEAL WITH KENNETH HOUSE?

09:33AM 3 A. I DIDN'T.

09:33AM 4 Q. DID YOU EVER SEE KENNETH HOUSE?

09:34AM 5 A. OH, LET ME BACK UP. RENE WENT TO JAIL FOR, LIKE, A  
09:34AM 6 WEEK FOR--HE FAILED A UA. AND I HAD TO GO TO KENNETH HOUSE  
09:34AM 7 ONE TIME.

09:34AM 8 Q. WHEN DID HE GO TO JAIL FOR A WEEK?

09:34AM 9 A. I DON'T HAVE NO CLUE.

09:34AM 10 Q. OKAY.

09:34AM 11 A. I DON'T KNOW EXACTLY WHEN HE WENT TO JAIL FOR THAT WEEK.

09:34AM 12 Q. SO YOU SAID ONLY ONE TIME DID YOU DEAL WITH HOUSE?

09:34AM 13 A. YES.

09:34AM 14 Q. NOW, YOU TESTIFIED THAT THROUGH THAT TIME PERIOD THAT  
09:34AM 15 YOU WERE WORKING FIVE DAYS A WEEK, IS THAT RIGHT?

09:34AM 16 A. YES, SIR.

09:34AM 17 Q. SO, THEN, HOW WOULD YOU BE ABLE TO DISTRIBUTE PRODUCT  
09:34AM 18 TO YOUR CUSTOMERS IF YOU ONLY WENT ONE TIME THAT WEEK WITH  
09:34AM 19 HOUSE?

09:34AM 20 A. I'M SORRY. I DIDN'T UNDERSTAND THAT.

09:34AM 21 Q. YOU SAID YOU DIDN'T USE. CORRECT?

09:34AM 22 A. RIGHT.

09:34AM 23 Q. SO YOU HAD AN ESTABLISHED CUSTOMER BASE, DID YOU NOT?

09:34AM 24 A. YES.

09:34AM 25 Q. AND IT WAS YOUR TESTIMONY THAT FOR FIVE DAYS A WEEK

1515

09:34AM 1 YOU WERE GETTING METHAMPHETAMINE TO DISTRIBUTE TO YOUR CUSTOMER  
09:35AM 2 BASE?  
09:35AM 3 A. YES.  
09:35AM 4 Q. THROUGH JUNE--JUNE TO AUGUST 2011?  
09:35AM 5 A. YES.  
09:35AM 6 Q. YOU TESTIFIED THAT WHEN RENE SALAZAR WENT TO JAIL FOR  
09:35AM 7 A WEEK PERIOD OF TIME THAT YOU DEALT WITH KENNETH HOUSE ONLY  
09:35AM 8 ONE TIME, IS THAT RIGHT?  
09:35AM 9 A. YEAH. AND I WENT AND PICKED UP I THINK IT WAS AN OUNCE  
09:35AM 10 OR MAYBE A HALF-OUNCE. I'M NOT REAL SURE.  
09:35AM 11 Q. THEN, HOW WERE YOU ABLE TO SUPPLY YOUR EXISTING  
09:35AM 12 CUSTOMER BASE IF YOU ONLY WENT TO KENNETH HOUSE THAT ONE TIME?  
09:35AM 13 A. I GUESS DURING THAT WEEK--I MEAN, I ONLY SOLD SO MUCH--  
09:35AM 14 I DON'T KNOW.  
09:35AM 15 Q. YOU SAID THAT YOU HAD KNOWN KENNETH HOUSE FOR A LONG  
09:35AM 16 TIME, IS THAT RIGHT?  
09:35AM 17 A. YES.  
09:35AM 18 Q. DID YOU GO TO SCHOOL WITH HIM?  
09:35AM 19 A. [MOVING HEAD UP AND DOWN]  
09:35AM 20 Q. HOW LONG DID YOU KNOW HE WAS DEALING METHAMPHETAMINES?  
09:35AM 21 A. WHEN HIM--WHEN HIM AND RENE WERE WORKING TOGETHER.  
09:35AM 22 Q. SO YOU NEVER KNEW THAT HE WAS DEALING--  
09:35AM 23 A. NO, I THOUGHT HE WAS JUST A USER, HONESTLY.  
09:36AM 24 Q. YOU THOUGHT HE WAS A USER SINCE THE DAYS YOU WERE IN  
09:36AM 25 HIGH SCHOOL?

1516

09:36AM 1 A. NO. I HADN'T SEEN HIM FROM SINCE HIGH SCHOOL. FOR  
09:36AM 2 YEARS, I DIDN'T SEE HIM.

09:36AM 3 Q. I BELIEVE YOU ALSO TESTIFIED THAT YOU HAD MET MIKE  
09:36AM 4 CAMACHO THROUGH RENE. IS THAT RIGHT?

09:36AM 5 A. YES.

09:36AM 6 Q. HAD YOU EVER SEEN MIKE CAMACHO BEFORE?

09:36AM 7 A. NO.

09:36AM 8 Q. HOW MANY TIMES DID YOU SEE MIKE CAMACHO WITH RENE  
09:36AM 9 SALAZAR?

09:36AM 10 A. JUST ONE TIME.

09:36AM 11 Q. BUT HE DIDN'T TELL YOU HE WAS MAKING THIS INTRODUCTION  
09:36AM 12 TO YOU AS A SOURCE OF SUPPLY, DID HE?

09:36AM 13 A. NO. HE JUST INTRODUCED ME TO HIM.

09:36AM 14 MR. KEMP: PASS THE WITNESS, YOUR HONOR.

09:36AM 15 THE COURT: MR. WHALEN, ANY QUESTIONS?

09:36AM 16 MR. WHALEN: I HAVE NO QUESTIONS.

09:36AM 17 THE COURT: MR. PETRAZIO?

09:36AM 18 MR. PETRAZIO: NO QUESTIONS.

09:36AM 19 THE COURT: ALL RIGHT.

09:36AM 20 MR. GONZALEZ, ANYTHING ELSE?

09:36AM 21 MR. GONZALEZ: NOTHING FURTHER.

09:36AM 22 THE COURT: IS THIS WITNESS EXCUSED, THEN?

09:36AM 23 MR. GONZALEZ: YES, YOUR HONOR.

09:36AM 24 THE COURT: ALL RIGHT.

09:36AM 25 MS. STEWART, THANK YOU. I NEED TO TELL YOU THAT YOU

1517

09:37AM 1 CANNOT DISCUSS YOUR TESTIMONY THAT YOU HAVE GIVEN HERE WITH ANY  
09:37AM 2 OTHER WITNESSES IN THIS CASE UNTIL WE HAVE FINISHED THE TRIAL.

09:37AM 3 THE WITNESS: YES, SIR. THANK YOU.

09:37AM 4 MS. BATSON: YOUR HONOR, WE CALL BRIAN MCCLARAN.

09:37AM 5 THE COURT: OKAY. OFFICER, IF YOU WILL COME UP AND  
09:37AM 6 BE PLACED UNDER OATH.

09:37AM 7 DEPUTY COURT CLERK: YOU DO SOLEMNLY SWEAR THAT THE  
09:37AM 8 TESTIMONY YOU SHALL GIVE IN THE CASE NOW IN HEARING SHALL BE  
09:37AM 9 THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP  
09:37AM 10 YOU GOD.

09:37AM 11 THE WITNESS: I DO.

09:37AM 12 THE COURT: ALL RIGHT, MS. BATSON.

09:37AM 13 DIRECT EXAMINATION OF BRIAN MCCLARAN ON BEHALF OF THE GOVERNMENT

09:37AM 14 MS. BATSON: THANK YOU, YOUR HONOR.

09:37AM 15 Q. STATE YOUR NAME FOR THE RECORD, PLEASE.

09:37AM 16 A. BRIAN MCCLARAN.

09:37AM 17 Q. AND HOW ARE YOU EMPLOYED?

09:37AM 18 A. I AM CURRENTLY EMPLOYED BY THE SHERMAN POLICE  
09:37AM 19 DEPARTMENT AS A NARCOTICS DETECTIVE.

09:37AM 20 Q. AND HOW LONG HAVE YOU BEEN WITH SHERMAN P.D.?

09:37AM 21 A. OVER FIVE YEARS.

09:37AM 22 Q. AND HOW LONG HAVE YOU BEEN IN THE NARCOTICS SECTION?

09:38AM 23 A. APPROXIMATELY FOUR YEARS.

09:38AM 24 Q. NOW, IN JULY OF 1999, WERE YOU WORKING WITH SHERMAN  
09:38AM 25 P.D. THEN?

1518

09:38AM 1 A. YES, I WAS.

09:38AM 2 Q. AND AT THAT TIME DID OFFICERS WITH THE SHERMAN POLICE  
09:38AM 3 DEPARTMENT, INCLUDING YOURSELF--DID Y'ALL RECEIVE INFORMATION  
09:38AM 4 FROM A CONFIDENTIAL INFORMANT THAT DEFENDANT TIMOTHY BOWEN WAS  
09:38AM 5 DISTRIBUTING CRACK COCAINE?

09:38AM 6 MR. WHALEN: I OBJECT.

09:38AM 7 THE COURT: WAIT A MINUTE.

09:38AM 8 MR. WHALEN: MAY WE APPROACH?

09:38AM 9 THE COURT: I NEED TO PUT IT ON THE RECORD IF YOU  
09:38AM 10 HAVE SOMETHING TO SAY.

09:38AM 11 LADIES AND GENTLEMEN, I NEED TO TAKE THIS UP OUTSIDE  
09:38AM 12 YOUR PRESENCE. WOULD YOU GO WITH THE COURT OFFICER, PLEASE.

09:38AM 13 COURT SECURITY OFFICER: ALL RISE.

09:39AM 14 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

09:39AM 15 THE COURT: ALL RIGHT. BE SEATED, PLEASE.

09:39AM 16 IS YOUR OBJECTION "HEARSAY"?

09:39AM 17 MR. WHALEN: YOUR HONOR, YES, HEARSAY, BUT ALSO WE  
09:39AM 18 WOULD OBJECT--

09:39AM 19 DEPUTY COURT CLERK: TURN ON YOUR MIKE, PLEASE.

09:39AM 20 MR. WHALEN: WE WOULD OBJECT TO THE UNDERLYING FACTS  
09:39AM 21 CONCERNING EACH OFFENSE. I MEAN, I THINK THEY CAN--

09:39AM 22 THE COURT: CONCERNING EACH OFFENSE?

09:39AM 23 MR. WHALEN: WELL, EACH CONVICTION. THEY'VE ALLEGED  
09:39AM 24 TWO PRIOR CONVICTIONS UNDER 404(B). AND SO WE'RE GOING TO  
09:39AM 25 OBJECT TO THE UNDERLYING FACTS ABOUT THOSE OFFENSES. THEY'VE

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09:39AM 1 PUT ON THEIR NOTICE ABOUT THE CONVICTIONS AND PROVIDED THE  
09:39AM 2 JUDGMENTS AND SENTENCES AND REPORTS, BUT WE WOULD OBJECT TO  
09:39AM 3 THE UNDERLYING FACTS. THE FACT HE HAS CONVICTIONS, I THINK,  
09:39AM 4 SATISFIES THE NECESSITY UNDER 404(B) THAT IT'S A SIMILAR ACT.  
09:39AM 5 WE WOULD OBJECT TO--

09:39AM 6 THE COURT: THE QUESTION BY MS. BATSON HAD TO DO  
09:39AM 7 WITH--NOT WITH EXTRANEous OFFENSES, BUT EVENTS INTRINSIC TO  
09:40AM 8 THIS CHARGED CRIME.

09:40AM 9 CORRECT?

09:40AM 10 MS. BATSON: YOUR HONOR, THIS WOULD BE THE 404(B).  
09:40AM 11 THIS WAS A 1999 INFORMATION JUST ON TIMOTHY BOWEN.

09:40AM 12 THE COURT: THAT WAS IN 1999?

09:40AM 13 MS. BATSON: 1999, YES, SIR.

09:40AM 14 THE COURT: OKAY. WAIT A MINUTE.

09:40AM 15 MS. BATSON: SO, YOUR HONOR, IF I UNDERSTAND  
09:40AM 16 MR. WHALEN CORRECTLY, HE--

09:40AM 17 MAY I HAVE A MINUTE WITH MR. WHALEN?

09:40AM 18 THE COURT: YES.

09:40AM 19 MS. BATSON: I'M TRYING TO SEE HOW...

09:40AM 20 [OFF-THE-RECORD DISCUSSION BETWEEN COUNSEL]

09:43AM 21 THE COURT: WHICH ONE OF THESE TWO OFFENSES WAS  
09:43AM 22 MENTIONED YESTERDAY AND MR. WHALEN ASKED ME TO INSTRUCT THE  
09:43AM 23 JURY, GIVE A LIMITING INSTRUCTION?

09:43AM 24 MS. BATSON: I JUST ASKED YESTERDAY, WITH MS. BOWEN,  
09:43AM 25 IF SHE WAS AWARE THAT TIM BOWEN HAD BEEN CONVICTED OF THE

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09:43AM 1 DISTRIBUTION OF CRACK COCAINE.

09:43AM 2 THE COURT: OKAY. AND HE HAS A FEDERAL CONVICTION  
09:43AM 3 FOR CRACK COCAINE, AND A STATE CONVICTION? BOTH FOR CRACK  
09:43AM 4 COCAINE?

09:43AM 5 MS. BATSON: RIGHT. THE FEDERAL CONVICTION IS  
09:43AM 6 CONSPIRACY, YOUR HONOR.

09:43AM 7 THE COURT: OKAY. ALL RIGHT. SO I HAVE AN  
09:43AM 8 OBJECTION TO YOUR QUESTION WHETHER HE LEARNED IN 1999 THAT  
09:43AM 9 MR. BOWEN WAS DISTRIBUTING DRUGS. WHICH OF THE TWO CASES  
09:44AM 10 DOES THAT REFER TO, THE STATE CASE OR--

09:44AM 11 MS. BATSON: BOTH.

09:44AM 12 THE COURT: --FEDERAL? BOTH OF THEM?

09:44AM 13 MS. BATSON: YES, BOTH OF THEM. I BELIEVE  
09:44AM 14 MR. WHALEN--IN CONVERSATION WITH MR. WHALEN, HE IS OBJECTING TO  
09:44AM 15 US GOING INTO THE FACTS OF THOSE PRIOR CONVICTIONS. BUT HE'S  
09:44AM 16 UNABLE TO STIPULATE TO THE PRIOR CONVICTIONS THEMSELVES. AND  
09:44AM 17 SO WHAT I INFORMED HIM WAS NORMALLY IN THE PRESENTATION OF  
09:44AM 18 404(B), WE PRESENT AN OFFICER WHO WAS INVOLVED AT THE TIME WHO  
09:44AM 19 IS FAMILIAR WITH THE FACTS AND CAN TESTIFY AND IDENTIFY THE  
09:44AM 20 DEFENDANT, AND WE GO INTO THE FACTS TO PROVE UP THE CONVICTION.  
09:44AM 21 SO... BUT HE WANTS TO OBJECT TO US GOING INTO UNDERLYING  
09:44AM 22 FACTS.

09:44AM 23 THE COURT: WELL, YOU DON'T NEED TO GO INTO ANY  
09:44AM 24 DETAIL ON THE UNDERLYING--OR THE 404(B) EVIDENCE. I DON'T  
09:44AM 25 KNOW WHAT YOU WANT TO ASK. MAYBE IT'S TOO EARLY. MAYBE IT'S

09:44AM 1 PREMATURE HERE.

09:45AM 2 MS. BATSON: DO YOU WANT ME TO ASK IT NOW, YOUR  
09:45AM 3 HONOR, OUTSIDE THE PRESENCE OF THE JURY?

09:45AM 4 THE COURT: SURE. I HAVE MADE A RULING ON THIS,  
09:45AM 5 THOUGH, AND I'M GOING TO ALLOW THE GOVERNMENT--AND I SAID SO  
09:45AM 6 IN MY ORDER WHICH I SIGNED, LET'S SEE, DECEMBER 3RD, 2012,  
09:45AM 7 THAT THE GOVERNMENT MAY OFFER EVIDENCE OF THE TWO SIMILAR-ACT  
09:45AM 8 CONVICTIONS OF MR. BOWEN. ONE WAS IN FEDERAL COURT, CAUSE  
09:45AM 9 NUMBER 4:01CR29, AND THAT WAS IN--THE ARREST WAS IN 2001. I'M  
09:45AM 10 NOT SURE WHEN HE WAS ULTIMATELY CONVICTED. BUT, ANYWAY. AND  
09:45AM 11 THEN THERE WAS A FEBRUARY 13TH, 2002, CONVICTION IN STATE  
09:45AM 12 COURT. WERE THEY TWO SEPARATE--WELL, LET'S SEE. ONE WAS  
09:45AM 13 CONSPIRACY, ONE WAS DELIVERY. DID THE CONSPIRACY ENCOMPASS  
09:46AM 14 THE STATE DELIVERY?

09:46AM 15 MS. BATSON: YES, YOUR HONOR.

09:46AM 16 THE COURT: OKAY.

09:46AM 17 MS. BATSON: BUT THERE ARE STILL TWO SEPARATE  
09:46AM 18 CONVICTIONS.

09:46AM 19 THE COURT: I UNDERSTAND. DO YOU WANT TO JUST ASK  
09:46AM 20 WHATEVER QUESTIONS YOU HAVE?

09:46AM 21 MS. BATSON: SURE.

09:46AM 22 Q. NOW, ARE YOU A DETECTIVE?

09:46AM 23 A. YES, MA'AM.

09:46AM 24 Q. OKAY. DETECTIVE MCCLARAN, YOU STATED THAT IN 1999 YOU  
09:46AM 25 WERE WORKING WITH THE SHERMAN POLICE DEPARTMENT. BUT, I MEAN,

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09:46AM 1 WERE YOU WORKING FOR POTTSBORO, BUT ASSISTING SHERMAN POLICE  
09:46AM 2 DEPARTMENT?

09:46AM 3 A. I WAS WORKING FOR POTTSBORO, ASSISTING SHERMAN POLICE  
09:46AM 4 DEPARTMENT.

09:46AM 5 Q. OKAY. ALL RIGHT. SO THAT WAS--ALL RIGHT. BAD  
09:46AM 6 QUESTION. SO HOPEFULLY THAT CLARIFIED ANY ISSUES THERE.

09:46AM 7 AND WHEN YOU WERE ASSISTING THE SHERMAN POLICE  
09:46AM 8 DEPARTMENT, WERE YOU AWARE THAT THEY HAD RECEIVED INFORMATION  
09:46AM 9 FROM A CONFIDENTIAL INFORMANT THAT DEFENDANT TIMOTHY BOWEN WAS  
09:46AM 10 SELLING CRACK COCAINE?

09:46AM 11 A. YES, I WAS.

09:46AM 12 Q. AND WAS HE SELLING FROM A RESIDENCE?

09:46AM 13 A. YES; 308 SOUTH DEWEY.

09:46AM 14 Q. OKAY. AND BASED ON THE INFORMATION RECEIVED FROM THE  
09:47AM 15 CONFIDENTIAL INFORMANT, DID YOU SET UP VIDEO SURVEILLANCE AT  
09:47AM 16 THAT RESIDENCE?

09:47AM 17 A. YES, WE DID.

09:47AM 18 Q. OKAY. AND DURING THE VIDEO SURVEILLANCE, WAS THE  
09:47AM 19 DEFENDANT SEEN DISTRIBUTING NUMEROUS TIMES--CRACK COCAINE  
09:47AM 20 NUMEROUS TIMES?

09:47AM 21 A. YES, HE WAS.

09:47AM 22 Q. AND THE DISTRIBUTION OF THAT CRACK COCAINE LED TO TWO  
09:47AM 23 SEPARATE CONVICTIONS?

09:47AM 24 A. YES, IT DID.

09:47AM 25 Q. ONE FEDERALLY IN 2001?

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09:47AM 1 A. YES, THAT'S CORRECT.

09:47AM 2 Q. AND ONE STATE CHARGE OF DISTRIBUTION OF CRACK COCAINE  
09:47AM 3 IN 2002?

09:47AM 4 A. YES, MA'AM.

09:47AM 5 MS. BATSON: OKAY.

09:47AM 6 THE COURT: OKAY.

09:47AM 7 MS. BATSON: AND, THEN, YOUR HONOR, I CAN USE THE  
09:47AM 8 JUDGMENTS, PUT THEM IN AS EVIDENCE. I--YOU KNOW, I HAD TOLD  
09:47AM 9 MR. WHALEN--

09:47AM 10 THE COURT: I DON'T KNOW THAT YOU NEED TO.

09:47AM 11 MS. BATSON: I TOLD MR. WHALEN I NORMALLY DON'T  
09:47AM 12 DO THAT, BUT IF HE WANTS TO OBJECT TO THAT, I MEAN, I HAVE  
09:47AM 13 TO PROVE THEM UP, AND SO I COULD PUT THEM IN AS EXHIBITS.

09:47AM 14 MR. WHALEN: I WOULD SAY IF THAT'S THE EXTENT OF THE  
09:47AM 15 OFFER, I WON'T PROFFER ANY OBJECTION TO THOSE QUESTIONS. I'M  
09:48AM 16 NOT WAIVING MY OVERALL OBJECTION TO THE 404(B). I WANT TO MAKE  
09:48AM 17 THAT CLEAR. AND THEN I WOULD ASK THAT WHEN THE JURY COMES BACK  
09:48AM 18 IN, I WOULD MAKE A REQUEST THAT THE COURT GIVE A LIMITING  
09:48AM 19 INSTRUCTION NOW THAT THE TESTIMONY THEY'RE ABOUT TO HEAR IS  
09:48AM 20 BEING OFFERED FOR THIS PURPOSE AND LIMITED TO THAT PURPOSE.

09:48AM 21 THE COURT: OKAY.

09:48AM 22 MS. BATSON, SO THOSE ARE THE QUESTIONS YOU WANT TO  
09:48AM 23 ASK?

09:48AM 24 MS. BATSON: YES, THAT'S IT, YOUR HONOR. AND THEN,  
09:48AM 25 AS MR. WHALEN STATED, IF YOU WANT TO GIVE THE LIMITING

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09:48AM 1 INSTRUCTION WHEN THE JURY COMES BACK IN, AND I GUESS WHEN IT'S  
09:48AM 2 OVER AGAIN GIVE IT TO THEM AND SAY NOW THAT THEY'VE HEARD IT,  
09:48AM 3 THEY, AGAIN, CAN ONLY CONSIDER IT FOR... AND, YOUR HONOR, WE  
09:48AM 4 WOULD ASK FOR THE INSTRUCTION IN--CITED IN 1.30 OF THE PATTERN  
09:48AM 5 JURY INSTRUCTIONS ON PAGE 46, THAT THAT WOULD BE THE LIMITING  
09:49AM 6 INSTRUCTION GIVEN TO THE JURY.

09:49AM 7 THE COURT: OKAY.

09:49AM 8 ARE YOU READY?

09:49AM 9 MR. WHALEN: YES, YOUR HONOR.

09:49AM 10 MS. BATSON: YES, YOUR HONOR.

09:49AM 11 THE COURT: LET'S BRING THE JURY BACK IN.

09:50AM 12 COURT SECURITY OFFICER: ALL RISE.

09:50AM 13 [OPEN COURT, DEFENDANTS AND JURY PRESENT]

09:50AM 14 THE COURT: ALL RIGHT. PLEASE TAKE YOUR SEATS.

09:50AM 15 LADIES AND GENTLEMEN, I GAVE YOU A SIMILAR

09:50AM 16 INSTRUCTION YESTERDAY, BUT LET ME TELL YOU THAT IN THE CASE  
09:50AM 17 OF DETECTIVE MCCLARAN, YOU ARE ABOUT TO HEAR TESTIMONY FROM  
09:50AM 18 HIM REGARDING ACTS OF THE DEFENDANT TIMOTHY BOWEN WHICH MAY BE  
09:50AM 19 SIMILAR TO THOSE ACTS THAT ARE CHARGED IN THE INDICTMENT IN  
09:50AM 20 THIS CASE, BUT WHICH WERE COMMITTED ON OTHER OCCASIONS. YOU  
09:50AM 21 MAY NOT CONSIDER ANY OF THIS TESTIMONY IN DECIDING IF MR. BOWEN  
09:51AM 22 COMMITTED THE ACT FOR WHICH HE IS ON TRIAL NOW, WHICH IS THE  
09:51AM 23 ACCUSATION OF CONSPIRING WITH OTHERS TO POSSESS WITH INTENT  
09:51AM 24 TO DISTRIBUTE METHAMPHETAMINE. HOWEVER, YOU CAN CONSIDER THE  
09:51AM 25 TESTIMONY FROM DETECTIVE MCCLARAN THAT YOU ARE ABOUT TO HEAR

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09:51AM 1 FOR VERY LIMITED PURPOSES. AND THAT IS, IF YOU FIND BEYOND  
09:51AM 2 A REASONABLE DOUBT FROM OTHER EVIDENCE IN THIS TRIAL THAT  
09:51AM 3 MR. BOWEN DID COMMIT THE ACTS FOR WHICH HE IS ON TRIAL RIGHT  
09:51AM 4 NOW, THEN YOU MAY CONSIDER THIS TESTIMONY OF SIMILAR ACTS  
09:51AM 5 ALLEGEDLY COMMITTED ON OTHER OCCASIONS FOR THE PURPOSE OF  
09:51AM 6 DETERMINING WHETHER OR NOT MR. BOWEN HAD THE STATE OF MIND  
09:51AM 7 OR THE INTENT NECESSARY TO COMMIT THE CRIME CHARGED IN THIS  
09:51AM 8 INDICTMENT THAT HE'S ON TRIAL FOR NOW, WHETHER HE HAD THE  
09:51AM 9 MOTIVE OR THE OPPORTUNITY TO COMMIT THE ACTS CHARGED IN  
09:51AM 10 THE INDICTMENT, WHETHER HE ACTED ACCORDING TO A PLAN OR IN  
09:52AM 11 PREPARATION FOR COMMISSION OF A CRIME, OR WHETHER HE COMMITTED  
09:52AM 12 THE ACTS FOR WHICH HE IS ON TRIAL BY ACCIDENT OR MISTAKE.  
09:52AM 13 THOSE ARE THE LIMITED PURPOSES FOR WHICH YOU CAN CONSIDER THIS  
09:52AM 14 TESTIMONY THAT YOU ARE ABOUT TO HEAR ABOUT OTHER SIMILAR ACTS  
09:52AM 15 BY MR. BOWEN.

09:52AM 16 OKAY, MS. BATSON.

09:52AM 17 MS. BATSON: THANK YOU, YOUR HONOR.

09:52AM 18 Q. DETECTIVE MCCLARAN, IN 1999, SPECIFICALLY, IN JULY OF  
09:52AM 19 1999, WHERE WERE YOU EMPLOYED?

09:52AM 20 A. I WAS EMPLOYED BY THE POTTSBORO POLICE DEPARTMENT.

09:52AM 21 Q. OKAY. AND DID YOU ASSIST THE SHERMAN POLICE DEPARTMENT  
09:52AM 22 WITH AN INVESTIGATION THEY HAD GOING ON THAT INCLUDED THE  
09:52AM 23 DEFENDANT TIMOTHY BOWEN?

09:52AM 24 A. YES, MA'AM, I DID.

09:52AM 25 Q. NOW, IN 1999, DID THE SHERMAN POLICE DEPARTMENT RECEIVE

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09:52AM 1 INFORMATION FROM A CONFIDENTIAL INFORMANT THAT NUMEROUS  
09:52AM 2 INDIVIDUALS, INCLUDING THE DEFENDANT TIMOTHY BOWEN--THAT THEY  
09:52AM 3 WERE DISTRIBUTING CRACK COCAINE FROM A PARTICULAR RESIDENCE IN  
09:52AM 4 SHERMAN?

09:52AM 5 A. YES, THEY DID.

09:52AM 6 Q. AND WHAT RESIDENCE WAS THAT?

09:53AM 7 A. 308 SOUTH DEWEY STREET, SHERMAN, TEXAS.

09:53AM 8 Q. ALL RIGHT. AND IS THAT--WHEN THE CONFIDENTIAL  
09:53AM 9 INFORMANT PROVIDED THAT INFORMATION, DID OFFICERS SET UP  
09:53AM 10 VIDEO SURVEILLANCE AT THAT RESIDENCE?

09:53AM 11 A. YES, THEY DID.

09:53AM 12 Q. OKAY. AND DURING THAT VIDEO SURVEILLANCE, WAS THE  
09:53AM 13 DEFENDANT TIMOTHY BOWEN SEEN DISTRIBUTING CRACK COCAINE ON  
09:53AM 14 NUMEROUS OCCASIONS?

09:53AM 15 A. YES, HE WAS.

09:53AM 16 Q. AND BASED ON THE EVIDENCE GATHERED DURING THE  
09:53AM 17 INVESTIGATION, INCLUDING THE VIDEO SURVEILLANCE, WAS DEFENDANT  
09:53AM 18 TIMOTHY BOWEN CHARGED FEDERALLY WITH CONSPIRACY TO DISTRIBUTE  
09:53AM 19 CRACK COCAINE?

09:53AM 20 A. YES, HE WAS.

09:53AM 21 Q. AND THEN IN THE STATE FOR THE DISTRIBUTION OF CRACK  
09:53AM 22 COCAINE?

09:53AM 23 A. YES, HE WAS.

09:53AM 24 Q. AND WAS HE CONVICTED IN 2001 OF THE FEDERAL CONSPIRACY?

09:53AM 25 A. YES, HE WAS.

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09:53AM 1 Q. AND THEN IN 2002 FOR THE STATE DISTRIBUTION?

09:53AM 2 A. YES, HE WAS.

09:53AM 3 Q. NOW, YOU'VE BEEN ONE OF THE CASE AGENTS ON THIS CASE

09:54AM 4 THAT WE'RE HERE ON TODAY, IS THAT CORRECT?

09:54AM 5 A. YES, MA'AM, THAT'S CORRECT.

09:54AM 6 Q. AND YOU'VE SEEN THE NUMEROUS EXHIBITS THAT HAVE BEEN

09:54AM 7 OFFERED BY THE GOVERNMENT?

09:54AM 8 A. YES, MA'AM, I HAVE.

09:54AM 9 Q. OKAY. AND IF YOU COULD LOOK AT GOVERNMENT'S EXHIBIT 67

09:54AM 10 IN THAT BOOK, I BELIEVE IT'S BEEN SHOWN, BUT I JUST WANT TO

09:54AM 11 MAKE SURE THAT IT'S BEEN ENTERED INTO EVIDENCE. DO YOU SEE

09:54AM 12 THAT PHOTOGRAPH THERE?

09:54AM 13 A. YES, MA'AM, I DO.

09:54AM 14 Q. AND WHAT IS IT?

09:54AM 15 A. THAT IS A PHOTOGRAPH OF THE DODGE MAGNUM THAT CARLOS

09:54AM 16 CABRALES DRIVES.

09:54AM 17 MS. BATSON: OKAY.

09:54AM 18 YOUR HONOR, AT THIS TIME I MOVE TO ADMIT

09:54AM 19 GOVERNMENT'S EXHIBIT 67 INTO EVIDENCE.

09:54AM 20 MR. WHALEN: NO OBJECTION.

09:54AM 21 MR. PETRAZIO: NO OBJECTION.

09:54AM 22 MR. KEMP: NO OBJECTION.

09:54AM 23 THE COURT: ALL RIGHT. GOVERNMENT'S EXHIBIT 67 IS

09:54AM 24 ADMITTED.

09:54AM 25 MS. BATSON: YOUR HONOR, MAY I HAVE A MINUTE?

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09:55AM 1 THE COURT: YES.

09:55AM 2 MS. BATSON:

09:55AM 3 Q. NOW, DETECTIVE MCCLARAN, AS YOU JUST TOLD THIS JURY,  
09:55AM 4 DEFENDANT BOWEN WAS CONVICTED IN 2001 OF CONSPIRACY TO POSSESS  
09:55AM 5 WITH INTENT TO DISTRIBUTE CRACK COCAINE, AND IN 2002 OF A STATE  
09:55AM 6 CHARGE OF THE DISTRIBUTION OF CRACK COCAINE.

09:55AM 7 A. YES, MA'AM.

09:55AM 8 Q. OKAY. AND ARE YOU AWARE OF THE TERM "DUAL  
09:55AM 9 SOVEREIGNTY"?

09:55AM 10 A. YES, MA'AM, I AM.

09:55AM 11 Q. AND WHAT DOES THAT MEAN?

09:55AM 12 A. THAT GIVES THE STATE OF TEXAS THE RIGHT TO PROSECUTE  
09:55AM 13 THEIR STATUTES AND CRIMINAL OFFENSES, AS WELL AS THE FEDERAL  
09:55AM 14 GOVERNMENT HAS THEIR OWN STATUTES AND CRIMINAL OFFENSES THAT  
09:55AM 15 THEY CAN PROSECUTE SEPARATELY.

09:55AM 16 Q. OKAY. SO, EVEN IF SOME INCIDENTS OVERLAP, THE FEDERAL  
09:55AM 17 SOVEREIGNTY IS DIFFERENT FROM THE STATE SOVEREIGNTY AND WE CAN  
09:55AM 18 EACH DO OUR OWN PROSECUTIONS, IS THAT CORRECT?

09:55AM 19 A. YES, MA'AM, THAT'S CORRECT.

09:55AM 20 MS. BATSON: NO FURTHER QUESTIONS.

09:55AM 21 THE COURT: ALL RIGHT.

09:55AM 22 MR. KEMP?

09:55AM 23 MR. KEMP: NO QUESTIONS, YOUR HONOR.

09:56AM 24 THE COURT: MR. WHALEN?

09:56AM 25

CROSS-EXAMINATION OF BRIAN MCCLARAN BY DEFENDANT BOWEN

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09:56AM 1 CROSS-EXAMINATION OF BRIAN MCCLARAN ON BEHALF OF THE DEFENDANT

09:56AM 2 BOWEN

09:56AM 3 MR. WHALEN:

09:56AM 4 Q. DETECTIVE MCCLARAN, JUST SO WE'RE CLEAR, EVEN THOUGH  
09:56AM 5 THE STATE OFFENSE--THE CONVICTION WAS IN 2002, THE DATE OF THE  
09:56AM 6 OFFENSE WAS IN 1999, IS THAT CORRECT?

09:56AM 7 A. YES, SIR, THAT IS CORRECT.

09:56AM 8 Q. SO THAT OFFENSE IN 1999, THAT WAS ENCOMPASSED IN THE  
09:56AM 9 FEDERAL CONSPIRACY INDICTMENT. CORRECT?

09:56AM 10 A. YES, SIR, THAT'S CORRECT.

09:56AM 11 Q. AND SO THE ACTS THAT WERE ALLEGED IN THE FEDERAL  
09:56AM 12 CONSPIRACY, THAT STATE CHARGE WAS PART OF THOSE ACTS, IS THAT  
09:56AM 13 RIGHT?

09:56AM 14 A. YES, SIR, THAT'S CORRECT.

09:56AM 15 Q. AND THAT ALL OCCURRED IN 1999?

09:56AM 16 A. THAT IS CORRECT, SIR.

09:56AM 17 Q. AND THAT WAS 13 YEARS AGO. CORRECT?

09:56AM 18 A. YES, SIR, THAT'S CORRECT.

09:56AM 19 MR. WHALEN: I'LL PASS THE WITNESS.

09:56AM 20 THE COURT: MS. BATSON?

09:56AM 21 REDIRECT EXAMINATION OF BRIAN MCCLARAN ON BEHALF OF THE

09:56AM 22 GOVERNMENT

09:56AM 23 MS. BATSON:

09:56AM 24 Q. JUST TO CLARIFY, DETECTIVE MCCLARAN, THE DEFENDANT  
09:56AM 25 WAS SEEN NUMEROUS TIMES DISTRIBUTING CRACK COCAINE?

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09:56AM 1 A. YES, MA'AM, THAT'S CORRECT.

09:57AM 2 Q. AND THE STATE CONVICTION ONLY CHARGES HIM WITH ONE OF

09:57AM 3 THOSE, IS THAT CORRECT?

09:57AM 4 A. YES, MA'AM, THAT'S CORRECT.

09:57AM 5 Q. AND THAT WOULD BE OCTOBER 26TH, I BELIEVE, OF 1999?

09:57AM 6 A. YES, MA'AM, I BELIEVE THAT'S CORRECT.

09:57AM 7 Q. AND THE CONSPIRACY--THE FEDERAL CONSPIRACY CHARGED HIM

09:57AM 8 AND OTHERS WITH THE OVERALL DISTRIBUTION AND INCLUDED ALL OF

09:57AM 9 THE TIMES THE DEFENDANT WAS SEEN DISTRIBUTING, IS THAT CORRECT?

09:57AM 10 A. YES, MA'AM, THAT'S CORRECT.

09:57AM 11 MS. BATSON: NO FURTHER QUESTIONS.

09:57AM 12 THE COURT: MR. WHALEN, ANYTHING FURTHER?

09:57AM 13 MR. WHALEN: NOTHING FURTHER.

09:57AM 14 THE COURT: THERE BEING NO FURTHER QUESTIONS, THEN,

09:57AM 15 THANK YOU, DETECTIVE MCCLARAN.

09:57AM 16 THE WITNESS: THANK YOU.

09:57AM 17 THE COURT: OKAY.

09:57AM 18 MS. BATSON: YOUR HONOR, AT THIS TIME THE UNITED

09:57AM 19 STATES RESTS ITS CASE-IN-CHIEF.

09:57AM 20 THE COURT: ALL RIGHT. THANK YOU.

09:57AM 21 LET ME ASK DEFENSE COUNSEL: DO YOU WANT A RECESS?

09:57AM 22 MR. WHALEN: YES, PLEASE.

09:57AM 23 MR. KEMP: YES, PLEASE.

09:57AM 24 MR. PETRAZIO: YES, PLEASE.

09:57AM 25 THE COURT: ALL RIGHT.

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09:57AM 1 LADIES AND GENTLEMEN, THE GOVERNMENT HAS RESTED ITS  
09:58AM 2 CASE. THE NEXT STEP IS FOR ME TO TAKE UP SOME MATTERS OUTSIDE  
09:58AM 3 YOUR PRESENCE. SO WE WILL TAKE A RECESS AT THIS TIME.

09:58AM 4 COURT SECURITY OFFICER: ALL RISE.

09:58AM 5 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

09:58AM 6 THE COURT: PLEASE BE SEATED.

09:58AM 7 MR. KEMP, I'LL START WITH YOU, OR WHOEVER WANTS TO  
09:58AM 8 START. IT DOESN'T MATTER.

09:58AM 9 MR. KEMP: YOUR HONOR, AT THIS TIME, ON BEHALF OF  
09:58AM 10 MR. SALAZAR, WE WOULD MAKE A RULE 29 MOTION FOR A JUDGMENT OF  
09:58AM 11 ACQUITTAL ON THE BASIS OF THE INSUFFICIENCY OF THE EVIDENCE  
09:58AM 12 PRESENTED BY THE GOVERNMENT IN THEIR CASE-IN-CHIEF.

09:59AM 13 THE COURT: LET ME JUST ASK: DO ALL THREE OF YOU  
09:59AM 14 WANT TO MAKE THAT MOTION?

09:59AM 15 MR. PETRAZIO: I DO, YOUR HONOR.

09:59AM 16 MR. WHALEN: I DO. MINE MAY BE A LITTLE BIT MORE  
09:59AM 17 INVOLVED THAN JUST THE GENERAL--

09:59AM 18 THE COURT: THAT'S FINE. I'LL HEAR FROM ALL THREE  
09:59AM 19 OF YOU. I THINK WHAT I NEED TO DO IS TAKE A BREAK AND GO  
09:59AM 20 THROUGH MY NOTES. I USUALLY DO SOME HIGHLIGHTING OR SOME  
09:59AM 21 RED-INK CHECKING, AND THEN I WILL BETTER RECALL THE EVIDENCE  
09:59AM 22 WHEN YOU MAKE YOUR MOTION.

09:59AM 23 MR. WHALEN: THANK YOU, YOUR HONOR.

09:59AM 24 THE COURT: OKAY. SO LET'S TAKE A RECESS. GIVE ME,  
09:59AM 25 I DON'T KNOW, AT LEAST 15 MINUTES TO GO BACK THROUGH MY NOTES.

09:59AM 1 OKAY. WE'LL RECESS FOR AT LEAST 15 MINUTES. THANK YOU.

09:59AM 2 [RECESS]

10:49AM 3 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

10:49AM 4 THE COURT: THANK YOU. PLEASE BE SEATED.

10:49AM 5 IT SOMETIMES TAKES ME LONGER THAN I THINK TO GO

10:49AM 6 THROUGH MY NOTES, BUT I HAVE DONE THAT. SO LET ME HEAR

10:49AM 7 WHATEVER YOU WANT TO SAY.

10:49AM 8 MR. KEMP, WAS THERE ANYTHING ELSE YOU WANTED TO SAY

10:49AM 9 ON YOUR RULE 29 MOTION?

10:49AM 10 MR. KEMP: NO, YOUR HONOR.

10:49AM 11 THE COURT: OKAY.

10:49AM 12 MR. KEMP: THAT WAS IT.

10:49AM 13 THE COURT: ALL RIGHT.

10:49AM 14 MR. WHALEN?

10:49AM 15 MR. WHALEN: YOUR HONOR, ON BEHALF OF MR. BOWEN,

10:50AM 16 WE WOULD MOVE UNDER RULE 29 FOR A MOTION FOR ACQUITTAL. WE

10:50AM 17 WOULD ARGUE THAT THERE HAS NOT BEEN ANY PROOF OF ANY AGREEMENT

10:50AM 18 BETWEEN MR. BOWEN AND ANYONE ELSE WITH THE INTENT TO DISTRIBUTE

10:50AM 19 METHAMPHETAMINE.

10:50AM 20 BY WAY OF ASSISTANCE, I DIRECT THE COURT TO UNITED

10:50AM 21 STATES VERSUS HOLLOWAY. IT IS A--THE CITE--IT'S AN UNPUBLISHED

10:50AM 22 OPINION, BUT I THINK IT'S VERY HELPFUL, BECAUSE IT LAYS OUT ALL

10:50AM 23 THE FACTORS OF ANALYZING A CONSPIRACY CASE THAT I THINK ARE

10:50AM 24 PERTINENT TO HEAR. THE CITE IS 377 F.APP'X 383. IT TALKS

10:50AM 25 ABOUT ALL THE DIFFERENT CONCEPTS, THE DIFFERENT ELEMENTS, AND

10:50AM 1 HOW MERE PRESENCE OR ASSOCIATION ALONE ARE NOT SUFFICIENT. BUT  
10:50AM 2 IN THAT PARTICULAR CASE, THEY TALK ABOUT, YOU KNOW, THERE'S THE  
10:50AM 3 BUYER/SELLER EXCEPTION THAT IF IT'S JUST A BUY/SELL AGREEMENT,  
10:51AM 4 THEN THERE MAY NOT BE PROOF OF A CONSPIRACY. AND ONE OF THE  
10:51AM 5 THINGS THEY LOOK AT AS AN EXAMPLE IS THAT EVIDENCE THAT A  
10:51AM 6 DEFENDANT PURCHASED DRUGS ON CONSIGNMENT WOULD PROVIDE STRONG  
10:51AM 7 EVIDENCE OF MEMBERSHIP IN A CONSPIRACY BECAUSE IT INDICATES  
10:51AM 8 A STRONG LEVEL OF TRUST IN AN ONGOING MUTUALLY DEPENDENT  
10:51AM 9 RELATIONSHIP. AND IN THAT PARTICULAR CASE THEY DIDN'T FIND  
10:51AM 10 THAT.

10:51AM 11 I THINK IN THIS PARTICULAR CASE THERE IS NO EVIDENCE  
10:51AM 12 PRESENTED ON BEHALF OF MR.--AS IT RELATES TO MR. BOWEN AS IT  
10:51AM 13 RELATES TO ANY DRUGS THAT WERE PLACED ON CONSIGNMENT. I THINK  
10:51AM 14 THE TESTIMONY--THE ONLY TESTIMONY THAT YOU HAVE IS FROM  
10:51AM 15 MR. PERALES. HE NEVER SAID HE FRONTED ANY DRUGS TO MR. BOWEN.  
10:51AM 16 I THINK MR. TIBBS AND ANYBODY ELSE WHO SAID THEY HAD ANY  
10:51AM 17 ASSOCIATION WITH MR. BOWEN SAID THAT THE DRUGS WERE ALWAYS PAID  
10:51AM 18 FOR AND THEY WERE NEVER FRONDED. SO I THINK THAT IS A FACTOR  
10:52AM 19 THE COURT SHOULD LOOK AT AS FAR AS IT RELATES TO WHETHER OR NOT  
10:52AM 20 THERE WAS AN AGREEMENT, BECAUSE THERE WAS NO DRUGS PLACED ON  
10:52AM 21 CONSIGNMENT.

10:52AM 22 ALSO, THEY DID MENTION IN THAT CASE IF EACH PARTY  
10:52AM 23 HAS A STAKE IN THE SUCCESS OF THE OTHER'S BUSINESS, SUGGESTING  
10:52AM 24 A SUBSTANTIAL DEGREE OF COOPERATION AND PARTNERSHIP RATHER THAN  
10:52AM 25 A SERIES OF ISOLATED AND SPORADIC TRANSACTIONS. I DON'T THINK

10:52AM 1 THERE'S ANY TESTIMONY FROM MR. PERALES, WHO IS THE ALLEGED  
10:52AM 2 SOURCE, THAT HE AND MR. BOWEN HAD ANY TYPE OF PARTNERSHIP  
10:52AM 3 AND WERE DEPENDENT ON EACH OTHER FOR THEIR SUCCESS. I THINK  
10:52AM 4 THAT WAS NOT STATED ON THE RECORD.

10:52AM 5 ALSO, THERE WASN'T ANY TESTIMONY FROM MR. PERALES  
10:52AM 6 THAT THERE WAS ANY EVIDENCE THAT HE KNEW THAT THE DRUGS THAT  
10:52AM 7 HE WAS GIVING MR. BOWEN WERE GOING TO BE RESOLD. ONCE THEY  
10:52AM 8 WERE SOLD, HE DIDN'T HAVE ANY INTEREST IN WHAT HAPPENED TO THEM  
10:52AM 9 AFTER THAT BECAUSE HE WAS PAID FOR THEM. THEY HAD BEEN PAID.

10:53AM 10 AND ALSO I THINK THE EVIDENCE SHOWS THAT, YOU KNOW,  
10:53AM 11 AS THIS SO-CALLED MASSIVE GROUP OF PEOPLE IS BEHAVING IN  
10:53AM 12 A CERTAIN WAY, THAT ALL OF A SUDDEN MR. BOWEN'S NAME THEN  
10:53AM 13 APPEARS SOMETIME IN 2011. AND AS RELATES TO THAT, YOU HAVE  
10:53AM 14 MR. TIBBS, MS. DAVILA, MR. CABRALES TALKING ABOUT HOW HE MAY  
10:53AM 15 HAVE BEEN INVOLVED IN JUNE OR JULY OF 2011, THAT THEY WERE  
10:53AM 16 GOING DOWN TO DUNCANVILLE OR GOING TO DALLAS TO GET DRUGS FROM  
10:53AM 17 MR. PERALES. BUT YOU THEN HAD MS. KISHA BOWEN COME IN AND  
10:53AM 18 STATE THAT SHE DIDN'T MAKE THIS INTRODUCTION UNTIL SEPTEMBER OF  
10:53AM 19 2011. SO YOU HAVE ALL THAT INCONSISTENT TESTIMONY ABOUT WHEN  
10:53AM 20 HIS INVOLVEMENT OCCURRED.

10:53AM 21 YOU HAD MR. HOUSE, WHO TRIED TO IMPLICATE MR. BOWEN  
10:54AM 22 BY SAYING HE--THAT MR. SALAZAR TOLD HIM THAT HE WAS HAVING  
10:54AM 23 TROUBLE WITH MR. BOWEN. BUT THEN WHEN YOU LISTEN TO KISHA'S  
10:54AM 24 TESTIMONY, SHE DIDN'T MAKE THIS ALLEGED INTRODUCTION UNTIL  
10:54AM 25 AUGUST OF 2011. WE ALL KNOW BY THE TESTIMONY THAT THEN

10:54AM 1 MR. SALAZAR IS IN CUSTODY BY THAT TIME AND MR. HOUSE DIDN'T  
10:54AM 2 HAVE ANY DEALINGS WITH MR. BOWEN.

10:54AM 3 SO THEN YOU GET TO THE FALL OF 2011. YOU HAVE  
10:54AM 4 MR. TIBBS, WHO CLAIMS THAT THEY POOLED THEIR MONEY TOGETHER.  
10:54AM 5 BUT I THINK THE ISSUE THERE IS THEN THEY WOULD SEPARATE IT OUT  
10:54AM 6 AND THEN THEY WENT THEIR OWN WAYS, THAT NEITHER ONE OF THEM WAS  
10:54AM 7 MUTUALLY DEPENDENT ON EACH OTHER FOR THEIR SUCCESS. ONE WASN'T  
10:54AM 8 DEPENDING ON THE OTHER TO MAKE A PROFIT. THEY WEREN'T SPLITTING  
10:54AM 9 PROFITS. THERE WASN'T ANY EVIDENCE THAT THERE WAS ANY  
10:54AM 10 SPLITTING OF ANY TYPE OF PROFIT.

10:54AM 11 AND THEN I WOULD SIMPLY END THAT, YOU KNOW, THE CASE  
10:54AM 12 AGAINST MR. BOWEN SIMPLY RESTS ON CODEFENDANT TESTIMONY ALONE.  
10:55AM 13 YOU HAVE NO SURVEILLANCE, YOU HAVE NO TRAFFIC STOPS, YOU HAVE  
10:55AM 14 NO SEARCH WARRANTS, YOU HAVE NO WIRETAPS, YOU HAVE NO RECORDED  
10:55AM 15 PHONE CONVERSATIONS, NO DRUG SEIZURES, YOU HAVE NO PHYSICAL  
10:55AM 16 EVIDENCE OR ANY INVESTIGATIVE TECHNIQUES THAT WERE UTILIZED TO  
10:55AM 17 CORROBORATE ANY OF THIS TESTIMONY. MY UNDERSTANDING IS, IF  
10:55AM 18 YOU LISTENED TO THE EVIDENCE, THAT MR. MATA AND THE DEA GETS  
10:55AM 19 INVOLVED IN NOVEMBER OF 2011 AND THEN MR. BOWEN IS INDICTED IN  
10:55AM 20 JANUARY OF 2012.

10:55AM 21 SO I THINK WHEN YOU LOOK AT THE WHOLE RECORD ON ITS  
10:55AM 22 FACE AND LOOK AT THE ELEMENTS THEY NEEDED TO PROVE, YOUR HONOR,  
10:55AM 23 THERE'S SIMPLY NO EVIDENCE THAT THERE WAS ANY SORT OF AN  
10:55AM 24 AGREEMENT THAT MR. BOWEN ENTERED INTO OR INTENDED TO FURTHER  
10:55AM 25 IT.

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10:55AM 1 AND THEN, FINALLY, I WOULD ARGUE THAT THEY HAVE PLED  
10:55AM 2 THIS CASE AS THIS SINGLE OVERARCHING CONSPIRACY, BUT, FRANKLY,  
10:55AM 3 I THINK THEY'VE PROVEN SEVERAL ISOLATED CONSPIRACIES.

10:55AM 4 YOU HAD MR. NGUYEN, MR. CAMACHO AND THAT WHOLE LINE  
10:56AM 5 OF PEOPLE.

10:56AM 6 THEN YOU HEAR THAT MR. SALAZAR GOES TO JAIL, SO  
10:56AM 7 MR. QUIROLO STARTS DOING HIS OWN THING.

10:56AM 8 THEN CHRISTINA HOUSE AND KISHA BOWEN ARE STARTING TO  
10:56AM 9 DO THEIR OWN THING.

10:56AM 10 AND THEN YOU HAVE TREY TIBBS, WHO IS JUST ALL OVER  
10:56AM 11 THE MAP DOING HIS OWN THING WHEREVER HE CAN SO HE CAN SUPPORT  
10:56AM 12 HIS DRUG HABIT.

10:56AM 13 SO I THINK WHEN YOU LOOK AT IT ALL, THEY'VE PROVEN  
10:56AM 14 MAYBE A POSSIBILITY OF MULTIPLE CONSPIRACIES, BUT AS THEY HAVE  
10:56AM 15 CHARGED IT WITH ONE SINGLE AGREEMENT AND FURTHERANCE OF THAT  
10:56AM 16 AGREEMENT, THEY HAVEN'T DONE THAT. AND WE ASK FOR AN  
10:56AM 17 ACQUITTAL.

10:56AM 18 THE COURT: OKAY. WHILE YOU ARE AT THE PODIUM, YOU  
10:56AM 19 MENTIONED THE TESTIMONY OF FERNANDO PERALES. I'LL GO THROUGH  
10:56AM 20 THAT. AND YOU'VE CITED THE HOLLOWAY CASE FOR THE PROPOSITION  
10:56AM 21 THAT SIMPLY A BUY/SELL ARRANGEMENT IS NOT EVIDENCE--AN  
10:56AM 22 ARRANGEMENT BETWEEN A BUYER AND A SELLER IS NOT NECESSARILY  
10:56AM 23 EVIDENCE OF A CONSPIRACY; HOWEVER, FRONTING DRUGS, FOR EXAMPLE,  
10:56AM 24 OR DRUGS GIVEN TO SOMEONE ON CONSIGNMENT MAY INDICATE A  
10:57AM 25 COOPERATIVE ARRANGEMENT.

10:57AM 1 JUST LOOKING THROUGH MY NOTES ON THE TESTIMONY--  
10:57AM 2 AND I CAN'T WRITE DOWN EVERYTHING--FERNANDO PERALES DID  
10:57AM 3 IDENTIFY MR. BOWEN IN OPEN COURT AND TESTIFIED THAT HE SOLD  
10:57AM 4 DRUGS--METHAMPHETAMINE--TO MR. BOWEN. HE TESTIFIED THAT TREY  
10:57AM 5 TIBBS WAS ONE OF--WAS WITH MR. BOWEN, AND THAT BOWEN AND TIBBS  
10:57AM 6 TOGETHER WOULD PICK UP 10 OUNCES, AND THAT PERALES BEGAN  
10:57AM 7 SELLING TO TIMOTHY BOWEN IN 2011, AND HE DELIVERED DRUGS TO  
10:57AM 8 TIMOTHY BOWEN.

10:57AM 9 THEN WE HEARD THE TESTIMONY OF KENNETH HOUSE, WHO  
10:57AM 10 TESTIFIED THAT MR. SALAZAR SAID HE WAS SELLING DRUGS TO TIMOTHY  
10:58AM 11 BOWEN. MR. HOUSE IDENTIFIED MR. BOWEN HERE IN THE COURTROOM.

10:58AM 12 THEN TREY TIBBS TESTIFIED, REGARDING BOWEN, THAT  
10:58AM 13 HE MET TIMOTHY BOWEN. HE IDENTIFIED HIM HERE IN THE COURTROOM.  
10:58AM 14 ACCORDING TO TIBBS, MR. BOWEN TOLD TIBBS THAT PERALES WAS  
10:58AM 15 BOWEN'S SUPPLIER. AND I BELIEVE TREY TIBBS TESTIFIED THAT  
10:58AM 16 HE AND MR. BOWEN DECIDED TO POOL THEIR MONEY AND BUY A LARGER  
10:58AM 17 QUANTITY TOGETHER FROM PERALES. IS THAT NOT CORRECT? IS THAT  
10:58AM 18 YOUR RECOLLECTION?

10:58AM 19 MR. WHALEN: I DON'T KNOW ABOUT THE LARGER QUANTITY,  
10:58AM 20 BUT MY RECOLLECTION IS THEY DID POOL THEIR MONEY TOGETHER. AND  
10:58AM 21 THERE WAS TESTIMONY THAT THEY GOT A BETTER PRICE AS A RESULT OF  
10:58AM 22 THAT. OR TIBBS WAS GETTING A BETTER PRICE. I WOULD AGREE WITH  
10:59AM 23 THAT.

10:59AM 24 THE COURT: OKAY. WELL, POOLING YOUR MONEY IS  
10:59AM 25 WORKING COOPERATIVELY. AND THAT WAS THE TESTIMONY OF TREY

10:59AM 1 TIBBS.

10:59AM 2 THERE WAS ALSO THE TESTIMONY OF MARIE DAVILA. AND  
10:59AM 3 SHE TESTIFIED THAT SHE WENT WITH JOSH BOWEN TO HIS BROTHER,  
10:59AM 4 TIM BOWEN'S, HOUSE TO GET METHAMPHETAMINE FROM TIM BOWEN. SHE  
10:59AM 5 IDENTIFIED TIM BOWEN HERE IN THE COURTROOM. SHE SAID SHE MET  
10:59AM 6 WITH TIM BOWEN TO GET A BETTER DEAL ON METHAMPHETAMINE. AND  
10:59AM 7 SHE STARTED DRIVING FOR TIM BOWEN IN MID-JUNE OF 2011 TO GO  
10:59AM 8 PICK UP DRUGS. AND TIM BOWEN PAID HER A HUNDRED DOLLARS EACH  
10:59AM 9 TIME, AND A GRAM OF METHAMPHETAMINE. NOW, THAT IS A COOPERATIVE  
10:59AM 10 WORKING RELATIONSHIP. THAT INDICATES--THAT'S EVIDENCE OF A  
11:00AM 11 CONSPIRACY. SHE HAD OTHER TESTIMONY. FOR EXAMPLE, SHE  
11:00AM 12 TESTIFIED SHE HEARD TIM BOWEN COMPLAINING TO DOGG, WHO IS  
11:00AM 13 FERNANDO PERALES, ABOUT THE PRICE OF METHAMPHETAMINE THAT  
11:00AM 14 PERALES WAS CHARGING TIM BOWEN.

11:00AM 15 WE HEARD FROM CARLOS CABRALES, WHO IDENTIFIED TIM  
11:00AM 16 BOWEN HERE IN THE COURTROOM. HE SAID THAT HE GOT PAID WITH  
11:00AM 17 METHAMPHETAMINE TO ALLOW HIS CAR TO BE USED BY MARIE DAVILA  
11:00AM 18 AND TIM BOWEN. AGAIN, I THINK THAT'S EVIDENCE OF A CONSPIRACY.  
11:00AM 19 THAT'S A WORKING RELATIONSHIP, CABRALES ALLOWING HIS CAR TO  
11:00AM 20 BE USED, AND IN RETURN BOWEN PAYS HIM OFF WITH METH.

11:01AM 21 SO I DON'T KNOW IF THERE'S OTHER TESTIMONY THAT  
11:01AM 22 MS. BATSON OR MR. GONZALEZ WANTS TO POINT OUT TO THE COURT  
11:01AM 23 ABOUT TIM BOWEN.

11:01AM 24 MS. BATSON: YOUR HONOR, WITH THE TESTIMONY THAT  
11:01AM 25 THE COURT HAS ALREADY GONE OVER, MS. DAVILA ALSO TESTIFIED THAT

11:01AM 1 THEY RENTED CARS, AND SO DID CARLOS CABRALES, IN ORDER FOR THEM  
11:01AM 2 TO DRIVE DOWN THERE TO MEET DOGG TO OBTAIN THE METHAMPHETAMINE.

11:01AM 3 BUT THEN KISHA BOWEN ALSO TESTIFIED THAT TIM BOWEN  
11:01AM 4 WAS HER BROTHER-IN-LAW. AND SHE IS THE ONE WHO INITIALLY  
11:01AM 5 INTRODUCED TIM BOWEN TO DEFENDANT SALAZAR IN ORDER FOR THEM TO  
11:01AM 6 START DISTRIBUTING DRUGS TO EACH OTHER. WHEN MR. SALAZAR WENT  
11:01AM 7 TO JAIL, HE STARTED GOING TO DOGG. AND CHRISTINA HOUSE ALSO  
11:01AM 8 MADE THAT INTRODUCTION. AND CHRISTINA HOUSE ALSO CORROBORATED  
11:01AM 9 THAT.

11:01AM 10 THE COURT: ALL RIGHT.

11:02AM 11 MR. WHALEN, BASED ON THE EVIDENCE I'VE REVIEWED AND  
11:02AM 12 WHAT MS. BATSON HAS JUST POINTED OUT, I'M GOING TO DENY YOUR  
11:02AM 13 MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29. I THINK THERE  
11:02AM 14 IS EVIDENCE OF A COOPERATIVE WORKING RELATIONSHIP BETWEEN  
11:02AM 15 MR. BOWEN AND OTHER COCONSPIRATORS IN THIS CASE. AND I LOOK  
11:02AM 16 AT THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE GOVERNMENT  
11:02AM 17 AT THIS POINT.

11:02AM 18 MR. WHALEN: I UNDERSTAND.

11:02AM 19 THE COURT: LET ME COME BACK TO YOU, MR. KEMP,  
11:02AM 20 BEFORE I GO ON.

11:02AM 21 WITH REGARD TO MR. SALAZAR, I'VE GONE THROUGH MY  
11:02AM 22 NOTES. ANDY NGUYEN TESTIFIED. HE IDENTIFIED MR. SALAZAR IN  
11:02AM 23 COURT--IN OPEN COURT HERE. HE TESTIFIED THAT SALAZAR WENT TO  
11:02AM 24 DALLAS TO PICK UP DRUGS.

11:03AM 25 MANUEL URBINA TESTIFIED. HE IDENTIFIED RENE SALAZAR

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11:03AM 1 IN THE COURTROOM. HE SAID THAT SALAZAR WAS WITH MANUEL CAMACHO  
11:03AM 2 WHEN CAMACHO PICKED UP METHAMPHETAMINE TO SELL TO SALAZAR.  
11:03AM 3 CAMACHO GOT THE METHAMPHETAMINE FROM URBINA, WHO WAS  
11:03AM 4 DISTRIBUTING METHAMPHETAMINE RECEIVED FROM ANDY NGUYEN.  
11:03AM 5 SO THERE'S EVIDENCE OF A WORKING RELATIONSHIP AMONG URBINA,  
11:03AM 6 SALAZAR, CAMACHO AND NGUYEN FROM THE TESTIMONY OF MANUEL  
11:03AM 7 URBINA.

11:04AM 8 MANUEL CAMACHO TESTIFIED. HE TESTIFIED THAT HE  
11:04AM 9 DISTRIBUTED METHAMPHETAMINE TO SALAZAR, WHO REDISTRIBUTED THE  
11:04AM 10 METHAMPHETAMINE IN SHERMAN AND DENISON. HE TESTIFIED ABOUT  
11:04AM 11 AMOUNTS. HE TESTIFIED THAT HE DELIVERED METHAMPHETAMINE  
11:04AM 12 TO SALAZAR, WHO LIVED ON DAY STREET, I THINK HE SAID. HE  
11:04AM 13 TESTIFIED THAT SALAZAR PUT CHARLES QUIROLO IN CHARGE WHEN  
11:04AM 14 SALAZAR WAS UNAVAILABLE. THAT'S EVIDENCE OF A COOPERATIVE  
11:04AM 15 WORKING RELATIONSHIP AMONG CAMACHO, SALAZAR AND QUIROLO.  
11:04AM 16 ALSO, HE TESTIFIED THAT KENNETH HOUSE WAS SALAZAR'S PARTNER.  
11:04AM 17 AGAIN, EVIDENCE OF A WORKING RELATIONSHIP IN A CONSPIRACY.  
11:05AM 18 HE TESTIFIED THAT TREY TIBBS WORKED FOR KENNETH HOUSE AND  
11:05AM 19 THAT HOUSE AND SALAZAR WERE PARTNERS.

11:05AM 20 WE HEARD FROM FERNANDO PERALES, ALSO KNOWN AS DOGG.  
11:05AM 21 HE TESTIFIED THAT KENNETH HOUSE TOLD PERALES THAT HOUSE'S  
11:05AM 22 PARTNER WAS RENE SALAZAR. PERALES IDENTIFIED SALAZAR IN  
11:05AM 23 OPEN COURT. HE TESTIFIED HE SOLD DIRECTLY TO SALAZAR--  
11:05AM 24 SOLD METHAMPHETAMINE TO SALAZAR.

11:05AM 25 PRISCILLA CAMACHO MARCELENO TESTIFIED. SHE SAID

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11:05AM 1 MANUEL CAMACHO IS HER YOUNGER BROTHER. SHE DROVE  
11:05AM 2 METHAMPHETAMINE TO DENISON FOR HER BROTHER. SHE IDENTIFIED  
11:06AM 3 RENE SALAZAR IN THE COURTROOM. SHE DELIVERED DRUGS TO SALAZAR.  
11:06AM 4 SHE ALSO DELIVERED TO KENNETH HOUSE WHEN SALAZAR WAS PRESENT.  
11:06AM 5 THAT'S SOME EVIDENCE THAT SALAZAR AND HOUSE ARE WORKING TOGETHER.  
11:06AM 6 BOBBY JOE JAMES TESTIFIED THAT SALAZAR WAS HOUSE'S  
11:06AM 7 PARTNER. HE IDENTIFIED RENE SALAZAR HERE IN THE COURTROOM.  
11:06AM 8 HE TESTIFIED HE GOT METHAMPHETAMINE FROM SALAZAR AND THAT HE  
11:06AM 9 SOLD THE METHAMPHETAMINE HE GOT FROM HOUSE AND SALAZAR. HE  
11:06AM 10 TESTIFIED CHARLIE QUIROLO WORKED FOR SALAZAR AND STASHED  
11:07AM 11 METHAMPHETAMINE FOR SALAZAR. THAT'S EVIDENCE OF A CONSPIRACY.  
11:07AM 12 CHARLES QUIROLO TESTIFIED. HE IDENTIFIED RENE  
11:07AM 13 SALAZAR IN OPEN COURT. HE TESTIFIED THAT SALAZAR SOLD  
11:07AM 14 METHAMPHETAMINE TO QUIROLO. HE TESTIFIED THAT HE WENT TO  
11:07AM 15 SALAZAR'S HOUSE TO BUY THE METHAMPHETAMINE AND THAT HE  
11:07AM 16 DELIVERED METHAMPHETAMINE TO SALAZAR'S CUSTOMERS. THAT IS  
11:07AM 17 EVIDENCE OF A COOPERATIVE WORKING RELATIONSHIP AND, THEREFORE,  
11:07AM 18 A CONSPIRACY. HE TESTIFIED THAT SALAZAR GOT HIS METH FROM  
11:07AM 19 MANUEL MIKE CAMACHO. HE ALSO TESTIFIED THAT SALAZAR SUPPORTED  
11:07AM 20 KENNETH HOUSE'S WIFE AFTER HOUSE WAS ARRESTED AND THAT SALAZAR  
11:07AM 21 HAD TOLD QUIROLO THAT HE SUPPORTED CHRISTINA HOUSE.  
11:08AM 22 ANDREA REEVES TESTIFIED THAT SHE'S THE EX-GIRLFRIEND  
11:08AM 23 OF RENE SALAZAR. SHE IDENTIFIED SALAZAR IN THE COURTROOM.  
11:08AM 24 SHE TESTIFIED SHE LIVED WITH SALAZAR AT 426 WEST DAY STREET  
11:08AM 25 IN DENISON AND THAT SALAZAR SOLD METHAMPHETAMINE.

11:08AM 1 KENNETH HOUSE TESTIFIED THAT SALAZAR WAS  
11:08AM 2 DISTRIBUTING DRUGS. HE IDENTIFIED SALAZAR IN THE COURTROOM.  
11:08AM 3 HE SAID HE SOLD METHAMPHETAMINE FOR RENE SALAZAR AND THEN HE  
11:08AM 4 BECAME A PARTNER WITH SALAZAR. AND FERNANDO PERALES BECAME  
11:08AM 5 HOUSE'S SUPPLIER, AND HE WOULD SPLIT THE DRUGS HE BOUGHT WITH  
11:08AM 6 SALAZAR. THAT'S EVIDENCE OF A CONSPIRACY. HE SAID HE SHARED  
11:09AM 7 DRUGS WITH SALAZAR. HE SAID BOBBY JAMES WOULD DELIVER DRUGS  
11:09AM 8 AND PICK UP MONEY FOR KENNETH HOUSE AND RENE SALAZAR. THAT'S  
11:09AM 9 EVIDENCE OF A CONSPIRACY. THOSE ARE WORKING RELATIONSHIPS.  
11:09AM 10 HE TESTIFIED AND CORROBORATED OTHER TESTIMONY THAT CHARLES  
11:09AM 11 QUIROLO SOLD AND STASHED DRUGS FOR RENE SALAZAR.

11:09AM 12 TREY TIBBS IDENTIFIED RENE SALAZAR IN THE COURTROOM.  
11:09AM 13 HE TESTIFIED MANUEL CAMACHO SUPPLIED KENNETH HOUSE AND RENE  
11:09AM 14 SALAZAR. HE TESTIFIED THAT HE BOUGHT METHAMPHETAMINE FROM  
11:10AM 15 SALAZAR AT THE HOUSE ON DAY STREET WHERE SALAZAR LIVED.  
11:10AM 16 HE TESTIFIED THAT SALAZAR LIVED WITH ANDREA REEVES.

11:10AM 17 KISHA BOWEN TESTIFIED. LET'S SEE. SHE IDENTIFIED  
11:10AM 18 RENE SALAZAR IN THE COURTROOM. SHE TESTIFIED THAT WHEN HER  
11:10AM 19 HUSBAND, MELVIN BOWEN, WENT TO JAIL--MELVIN BEING TIM BOWEN'S  
11:10AM 20 BROTHER--THAT RENE SALAZAR TOLD HER THAT MELVIN OWED HIM  
11:10AM 21 \$298 AND SALAZAR TOLD HER THAT SHE COULD WORK OFF THE DEBT  
11:11AM 22 BY PICKING UP METHAMPHETAMINE AND DELIVERING METHAMPHETAMINE  
11:11AM 23 FOR HIM. SHE DID SO. THAT'S EVIDENCE OF A CONSPIRACY.  
11:11AM 24 SHE TESTIFIED SHE DID THAT THREE TIMES.

11:11AM 25 SO YOUR MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE

11:11AM 1 29 IS DENIED. I THINK THERE IS EVIDENCE IN THE RECORD FROM  
11:11AM 2 WHICH A REASONABLE JURY COULD FIND RENE SALAZAR GUILTY.

11:11AM 3 MR. KEMP: THANK YOU, YOUR HONOR.

11:11AM 4 THE COURT: MR. PETRAZIO?

11:11AM 5 MR. PETRAZIO: THANK YOU, YOUR HONOR.

11:11AM 6 JUAN CARLOS VEGA MOVES THIS COURT, PURSUANT TO RULE  
11:11AM 7 29, FOR A JUDGMENT OF ACQUITTAL. YOUR HONOR, AS YOU ARE AWARE,

11:11AM 8 WE'VE HAD ONE WITNESS IN THIS CASE, ASIDE FROM THE CASE AGENT,

11:12AM 9 THAT TESTIFIED CONCERNING MR. VEGA'S ALLEGED INVOLVEMENT IN

11:12AM 10 THIS CASE. THE COCONSPIRATOR THAT'S ALLEGED MR. VEGA IS

11:12AM 11 INVOLVED, AS YOU ARE AWARE, IS RAMIRO CAZARES. MR. CAZARES

11:12AM 12 WAS ARRESTED ON APRIL 9TH OF 2012. AFTER HE WAS ARRESTED,

11:12AM 13 I SUSPECT THAT THE GOVERNMENT TOLD HIM THAT IF HE COOPERATED

11:12AM 14 AND PROVIDED SUBSTANTIAL ASSISTANCE IN GIVING NAMES OF OTHER

11:12AM 15 INDIVIDUALS, THAT THAT MIGHT ASSIST HIM IN HIS CASE. ON THAT

11:12AM 16 SAME DAY, A TELEPHONE CALL WAS MADE TO MR. VEGA BY RAMIRO

11:12AM 17 CAZARES. AND MR. MATA TESTIFIED THAT HE WAS PRESENT DURING

11:12AM 18 THAT CALL, ALBEIT MR. VEGA WAS NOT AWARE THAT THERE WAS SOMEONE

11:12AM 19 ELSE LISTENING IN. DURING THIS CALL THAT OBVIOUSLY MR. VEGA

11:13AM 20 HAS NO IDEA IS BEING RECORDED, SOME DISCUSSION WAS HAD.

11:13AM 21 WHETHER THAT RISES TO THE LEVEL OF A CONSPIRACY, WE DON'T

11:13AM 22 BELIEVE HAS BEEN ESTABLISHED. MR. VEGA WAS ARRESTED ON THE

11:13AM 23 VERY SAME DAY. HE WAS GIVEN AN ADDRESS BY MR. CAZARES. THE

11:13AM 24 AGENTS WENT TO THAT HOUSE WITHOUT A SEARCH WARRANT, GOT CONSENT

11:13AM 25 TO SEARCH, AND FOUND NOTHING. THE TESTIMONY IS THAT THERE WERE

11:13AM 1 NO PHOTOGRAPHS TAKEN AT THAT HOUSE. THERE WAS A CAR SEIZED  
11:13AM 2 FROM THE PARKING LOT OF THAT HOUSE THAT WAS REGISTERED TO  
11:13AM 3 RAMIRO CAZARES, THE BLACK HONDA ACCORD THAT HAD A TRAP IN IT.  
11:13AM 4 THERE'S NO EVIDENCE BEFORE THE COURT THAT MR. VEGA KNEW THERE  
11:13AM 5 WAS A TRAP IN THAT CAR.

11:13AM 6 THE TESTIMONY OF MR. RAMIRO CAZARES IS THAT HE HAD  
11:13AM 7 A ROMANTIC RELATIONSHIP WITH AN INDIVIDUAL BY THE NAME OF  
11:13AM 8 YOLANDA DIVA IN MEXICO AND THAT MS. DIVA CALLED HIM AND  
11:13AM 9 TESTIFIED--OR CALLED HIM AND SAID, "CAN YOU HELP ME OUT? MY  
11:14AM 10 BROTHER IS IN DANGER. I NEED YOU TO DO ME A FAVOR TO PROTECT  
11:14AM 11 HIM." THAT WAS THE TESTIMONY THAT HE GAVE, THAT HE HAD REACHED  
11:14AM 12 SOME SORT OF AGREEMENT WITH HIS GIRLFRIEND IN MEXICO TO DO HER  
11:14AM 13 A FAVOR, AND THAT'S HOW HE BECAME INVOLVED IN THIS CASE.  
11:14AM 14 THERE'S NO TESTIMONY THAT HE TOLD MR. VEGA ABOUT THAT AGREEMENT.  
11:14AM 15 THERE'S NO TESTIMONY THAT--THE TESTIMONY THAT HE DID GIVE WAS  
11:14AM 16 THAT HE AGREED TO DO FIVE FAVORS. AND AT SOME POINT, WE GO  
11:14AM 17 THROUGH AND THE TESTIMONY IS THERE THAT HE DOES THREE--HE GOES  
11:14AM 18 THROUGH AND HE MAKES THREE MONEY PICKUPS BY HIMSELF. THEN HE  
11:14AM 19 DOES TWO DRUG PICKUPS BY HIMSELF. THIS IS MR. RAMIRO CAZARES.  
11:14AM 20 AND THEN BEFORE WE GET TO THE LAST DRUG PICKUP, THE GOVERNMENT  
11:15AM 21 ASKS HIM IF HE KNOWS JUAN CARLOS VEGA. THAT'S WHERE HE'S  
11:15AM 22 BROUGHT INTO THIS DISCUSSION ON DIRECT.

11:15AM 23 THE TESTIMONY IS, "YEAH, HE'S SOMEONE WHO WORKS  
11:15AM 24 FOR ME. HE'S WORKED FOR ME FOR SIX OR SEVEN YEARS. I HAVE  
11:15AM 25 A REMODELING BUSINESS." WE DIDN'T CONTROVERT THAT TESTIMONY.

11:15AM 1 THAT'S HOW MR. VEGA KNOWS RAMIRO CAZARES. HE'S HIS WORKER.

11:15AM 2 THEN HE GOES ON TO SAY, WITHOUT EXPLANATION, WITHOUT

11:15AM 3 ANY SORT OF LAYING THE FOUNDATION THAT MR. VEGA KNEW ANYTHING

11:15AM 4 ABOUT HIS DRUG TRANSACTIONS, THAT HE LEFT THE WORK SITE WITH

11:15AM 5 MR. VEGA, NOT CLEAR WHETHER IN ONE OR TWO CARS, AND GOES TO

11:15AM 6 PICK UP DRUGS. AND WE DON'T EVEN KNOW THAT--AND MR. CAZARES

11:15AM 7 DIDN'T TESTIFY AT ANY POINT PRIOR TO THIS THAT HE INFORMED

11:15AM 8 MR. VEGA ABOUT HIS INVOLVEMENT IN THIS--IN THIS RUNNING DRUGS.

11:15AM 9 AND WHAT'S CURIOUS IS THIS IS THE LAST TIME THAT THEY--THAT

11:16AM 10 MR. CAZARES HAS AN AGREEMENT WITH PRIMO TO PICK UP DRUGS. AND

11:16AM 11 NOW HE'S INVOLVED HIS FRIEND AND HIS WORKER, MR. VEGA, IN THAT

11:16AM 12 TIME. THERE'S NO SURVEILLANCE OF THAT, THERE'S NO PICTURES OF

11:16AM 13 THAT, THERE'S NO EVIDENCE OTHER THAN MR. RAMIRO CAZARES SAYING,

11:16AM 14 "HE WENT WITH ME ON THIS TIME," WITHOUT EXPLAINING WHY ON THE

11:16AM 15 EIGHT OR NINE PREVIOUS TIMES THAT HE'S INVOLVED THAT HE NEVER

11:16AM 16 TAKES ANYONE, LET ALONE MR. VEGA. IT JUST SO HAPPENS THIS LAST

11:16AM 17 TIME.

11:16AM 18 AND THEN THERE'S TESTIMONY FROM RAMIRO CAZARES

11:16AM 19 THAT THEY TOOK THE DRUGS TO MR. VEGA'S APARTMENT WITHOUT

11:16AM 20 AN EXPLANATION AS TO WHY THEY DID THAT, AND THEN THEY TOOK

11:16AM 21 THEM--WHAT HE SAYS IS, "WE LOOKED AT THEM. WE OPENED THEM UP

11:16AM 22 AND WE LOOKED AT THEM TO SEE WHAT--WE JUST LOOKED AT THEM,

11:16AM 23 AND THEN WE TOOK THEM AND WE LEFT AND WE WENT TO BLANCA

11:16AM 24 CAZARES'S," HIS EX-WIFE'S HOUSE, WHERE MR. CAZARES SAYS HE PUT

11:17AM 25 THEM IN A CLOSET IN A BASKET AND THAT'S WHERE THEY WENT. HE

11:17AM 1 WAS JUST GONNA LEAVE THEM THERE FOR A FEW DAYS.  
11:17AM 2 JUDGE, AT THAT POINT THEY GET A WARRANT TO SEARCH  
11:17AM 3 THAT HOUSE, THE DRUGS ARE FOUND. THERE'S NO--AND THEN THEY  
11:17AM 4 PLAY THE RECORDING ABOUT COOKING. HE DIDN'T TESTIFY THAT THEY  
11:17AM 5 HAD EVER DONE THIS BEFORE. I THINK HIS TESTIMONY WAS, "I  
11:17AM 6 TALKED TO PRIMO AND MR. VEGA--THERE WAS AN OPEN LINE. HE HEARD  
11:17AM 7 EVERYTHING. AND HE TAUGHT US HOW TO COOK, AND WE TRIED IT AND  
11:17AM 8 IT DIDN'T WORK."

11:17AM 9 THERE'S NO EVIDENCE BEFORE THE COURT THAT THERE WAS  
11:17AM 10 AN AGREEMENT FOR MR. VEGA TO PARTICIPATE IN ANY CONSPIRACY. HE  
11:17AM 11 KNEW NO ONE IN THE CASE OTHER THAN RAMIRO CAZARES. AND TO SAY  
11:17AM 12 NOW THAT THEY'RE LINKED UP TO--WE DON'T KNOW WHO PRIMO IS. WE  
11:17AM 13 DO KNOW THAT THE GOVERNMENT HAS HIS PHONE NUMBER BECAUSE THEY  
11:18AM 14 PLACED A CALL TO HIM. BUT OTHER THAN THAT, THERE'S NO OTHER  
11:18AM 15 BUYS THAT WERE SET UP WITH PRIMO.

11:18AM 16 THE COURT: YOU ARE SAYING MR. VEGA DIDN'T KNOW WHO  
11:18AM 17 PRIMO WAS?

11:18AM 18 MR. PETRAZIO: I'M SAYING THAT THE PERSON THAT HAD  
11:18AM 19 ALL THE CONTACT WITH PRIMO WAS MR. CAZARES. HE TESTIFIED THAT  
11:18AM 20 SOMEBODY MET HIM AND GAVE HIM A PHONE. HE ALSO TESTIFIED THAT  
11:18AM 21 HE HAD THE NUMBER FOR PRIMO, THAT MR. CAZARES HAD THE NUMBER  
11:18AM 22 FOR PRIMO.

11:18AM 23 THE COURT: OKAY. BUT I HAVE IN MY NOTES THAT  
11:18AM 24 AGENT MATA TESTIFIED THAT UPON ARREST MR. VEGA GAVE A VOLUNTARY  
11:18AM 25 STATEMENT AND SAID HE KNEW CAZARES'S SOURCE OF DRUGS WAS PRIMO.

11:18AM 1 MR. PETRAZIO: I UNDERSTAND.

11:18AM 2 THE COURT: THAT'S WHAT I WROTE DOWN.

11:18AM 3 MR. PETRAZIO: I UNDERSTAND THAT, YOUR HONOR. AND

11:18AM 4 I ASKED MR. MATA WHY, WITH ALL THE TECHNOLOGY THAT WE HAVE,

11:18AM 5 THAT A STATEMENT OR A CONFESSION IS ALLEGEDLY MADE BY MR. VEGA,

11:19AM 6 THERE'S NO RECORDING OF IT. I MEAN, WHY THAT HAPPENED IS

11:19AM 7 BEYOND ME.

11:19AM 8 WHAT DID HAPPEN, THOUGH--AND I DON'T KNOW WHETHER

11:19AM 9 HIS RECORDER--ON THE SAME DAY THAT MR. VEGA ALLEGEDLY GAVE HIS

11:19AM 10 CONFESSION, HE RECORDED THE PHONE CALL. IT ALL HAPPENED ON THE

11:19AM 11 SAME DAY. SO HE HAS SOME SORT OF RECORDING DEVICE. WHY HE

11:19AM 12 WOULDN'T RECORD SOME ALLEGED CONFESSION, WE DON'T HAVE IT.

11:19AM 13 WHAT WE DO HAVE IS THE AGENT'S CASE REPORT SAYING THAT HE

11:19AM 14 SAID ALL THIS. THAT'S WHAT WE HAVE. WE DON'T HAVE ANY

11:19AM 15 DIRECT EVIDENCE, A RECORDING OF A CONFESSION, A RECORDING OF

11:19AM 16 A STATEMENT OR ANYTHING LIKE THAT. ANYTHING SIGNED. I THINK

11:19AM 17 YOU NEED MORE EVIDENCE OTHER THAN WHAT'S PURPORTEDLY SAID BY A

11:19AM 18 DEFENDANT TO ESTABLISH THEIR ROLE IN A CONSPIRACY. THERE WERE

11:19AM 19 NO OTHER WITNESSES. WE HAVE ONE PERSON. AND THAT ONE PERSON,

11:20AM 20 ON THE SAME DAY HE'S ARRESTED, MAKES A PHONE CALL THAT'S

11:20AM 21 RECORDED BY THE AGENT. NOW HE'S CONNECTED TO HIM WHEN HE'S

11:20AM 22 DONE NINE DEALS BY HIMSELF, AND THEN ON THIS LAST TIME NOW

11:20AM 23 MR. VEGA SUPPOSEDLY WENT WITH HIM. HE NEEDED TO TURN OVER

11:20AM 24 SOMEBODY. HE DIDN'T HAVE ANYONE BECAUSE HE DIDN'T THINK THAT

11:20AM 25 HIS EX-WIFE OR MS. DAVILA KNEW ABOUT THE DRUGS. HE TESTIFIED

11:20AM 1 TO THAT. THAT WAS HIS TESTIMONY. SO HE ONLY HAS ONE OTHER  
11:20AM 2 PERSON, AND IT'S MR. VEGA. AND HE'S BROUGHT IN ON THE DAY  
11:20AM 3 THAT NOT ONLY MR. VEGA IS ARRESTED, HE'S BROUGHT INTO THIS  
11:20AM 4 CASE--HE'S NOT EVEN ON THE GOVERNMENT'S RADAR UNTIL MR. CAZARES  
11:20AM 5 BRINGS UP HIS NAME. THEY MAKE A RECORDED TELEPHONE CALL, HE  
11:20AM 6 GETS ARRESTED ON THE SAME DAY, ON THE LAST DAY THAT ANYONE IN  
11:20AM 7 THIS CASE IS ARRESTED. AS YOU ARE AWARE, MR. VEGA IS NUMBER  
11:20AM 8 34 IN THIS CASE. HE'S IT. THEY STOPPED. AND ON THE LAST DAY  
11:20AM 9 THEY GIVE HIM SOMEBODY ELSE. AND THAT'S WHAT THE EVIDENCE IS.  
11:21AM 10 NONE OF THESE WITNESSES THAT TOOK THE STAND EVER SAID ANYTHING.  
11:21AM 11 EVERY TIME I HAD TO STAND UP AND SAY, "NO QUESTIONS," BECAUSE  
11:21AM 12 THEY DON'T KNOW WHO HE IS. SO WE HAVE ONE PERSON. AND SO FOR  
11:21AM 13 THAT REASON WE RESPECTFULLY MOVE UNDER RULE 29.

11:21AM 14 THE COURT: OKAY. THANK YOU, MR. PETRAZIO.

11:21AM 15 MS. BATSON OR MR. GONZALEZ?

11:21AM 16 MS. BATSON: DOES THE COURT HAVE THE TRANSCRIPT OF  
11:21AM 17 MR. CAZARES'S TESTIMONY?

11:21AM 18 THE COURT: THE TRANSCRIPT? OH, YES, AS A MATTER  
11:21AM 19 OF FACT, I DO.

11:21AM 20 LET ME TELL YOU WHAT I WROTE DOWN FIRST. LET'S SEE.  
11:21AM 21 HERE'S WHAT I WROTE DOWN ABOUT RAMIRO CAZARES: HE TESTIFIED  
11:21AM 22 THAT HE KNEW JUAN CARLOS VEGA. HE IDENTIFIED MR. VEGA IN THE  
11:21AM 23 COURTROOM. HE TESTIFIED HE GAVE A PHONE NUMBER TO MR. VEGA AND  
11:22AM 24 THAT VEGA TOLD HIM THAT HE PICKED UP SOME MONEY AND DELIVERED  
11:22AM 25 IT TO TWO WOMEN. HE TESTIFIED HE CALLED JUAN VEGA. VEGA DROVE

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11:22AM 1 A BLACK HONDA. HE CALLED JUAN VEGA, WHO DROVE A BLACK HONDA,  
11:22AM 2 TO MAKE THE PICKUP OF DRUGS. AND HE ALSO TESTIFIED THAT HE AND  
11:22AM 3 JUAN VEGA COOKED METHAMPHETAMINE TOGETHER AT THE BRITON COURT  
11:22AM 4 HOUSE.

11:22AM 5 WAS THAT IN GRAND PRAIRIE? IS THAT WHERE THAT HOUSE  
11:22AM 6 WAS?

11:22AM 7 MS. BATSON: YES, YOUR HONOR.

11:22AM 8 THE COURT: HE ALSO TESTIFIED ABOUT THE RECORDED  
11:22AM 9 PHONE CALL TO JUAN VEGA, WHICH IS GOVERNMENT'S EXHIBIT 52.  
11:23AM 10 AND I WAS JUST PULLING OUT THAT TRANSCRIPT HERE TO LOOK BACK  
11:23AM 11 THROUGH IT. I'M SORRY. YEAH. SO THAT WAS THE TESTIMONY OF  
11:23AM 12 RAMIRO CAZARES THAT I HAVE.

11:23AM 13 DID YOU WANT TO POINT OUT MORE TO ME IN THE  
11:23AM 14 TRANSCRIPT?

11:23AM 15 MS. BATSON: YOUR HONOR, THERE'S THE TRANSCRIPT OF,  
11:23AM 16 ACTUALLY, CAZARES'S TESTIMONY. DO YOU HAVE THAT?

11:23AM 17 THE COURT: YES.

11:23AM 18 MS. BATSON: OKAY. YOUR HONOR, I WAS JUST GOING TO  
11:23AM 19 POINT OUT A COUPLE OF THINGS. WHEN MR. CAZARES TESTIFIED--  
11:23AM 20 THIS IS ON--WHAT PAGE IS THIS? THIS IS GOING TO BE PAGE 50.  
11:23AM 21 HE TESTIFIED THAT THEY DECIDED TO DO IT TOGETHER.

11:23AM 22 THE COURT: ALL RIGHT. LET'S SEE.

11:23AM 23 MS. BATSON: IT'S AT PAGE 50, LINE 9.

11:23AM 24 THE COURT: LET ME GO BACK TO THE QUESTION. OKAY.  
11:24AM 25 I THINK THIS WAS DURING MR. PETRAZIO'S EXAMINATION OF THE

11:24AM 1 WITNESS.

11:24AM 2 MS. BATSON: YES, YOUR HONOR.

11:24AM 3 THE COURT: ALL RIGHT. MR. PETRAZIO ASKED

11:24AM 4 MR. CAZARES, "TELL ME WHO GOT JUAN INVOLVED IN THIS."

11:24AM 5 CAZARES SAID, "I DID."

11:24AM 6 "QUESTION: YOU DID. AND BECAUSE OF YOU, HE'S

11:24AM 7 SITTING HERE. CORRECT?

11:24AM 8 "ANSWER: YES.

11:25AM 9 "AND BECAUSE OF YOU, YOUR EX-WIFE IS IN THIS CASE.

11:25AM 10 CORRECT?"

11:25AM 11 "ANSWER: YES.

11:25AM 12 "YOU WERE THINKING OF YOURSELF. CORRECT?

11:25AM 13 "YES."

11:25AM 14 MR. PETRAZIO SAYS, "AND THAT'S ANOTHER PROBLEM YOU

11:25AM 15 HAVE, ISN'T IT?"

11:25AM 16 "ANSWER: YES. BUT I'M READY TO CHANGE IT."

11:25AM 17 MR. PETRAZIO SAYS, "THAT'S VERY ENCOURAGING, I'M

11:25AM 18 SURE, FOR MR. VEGA AT THIS POINT. IS THAT ENCOURAGING?"

11:25AM 19 "ANSWER: WELL, NO, WE DECIDED TO DO THAT TOGETHER.

11:25AM 20 NO ONE FORCED HIM."

11:25AM 21 IS THAT WHAT YOU WANT ME TO READ?

11:25AM 22 MS. BATSON: YES, YOUR HONOR, THAT'S PART OF IT,

11:25AM 23 THAT THEY WERE DOING IT TOGETHER AND THAT MR. VEGA WASN'T

11:25AM 24 FORCED TO DO IT. THAT'S A PART OF MR. CAZARES'S TESTIMONY.

11:26AM 25 AND THEN ON PAGE 58 MR. CAZARES FURTHER TESTIFIES

11:26AM 1 THAT MR. VEGA WAS GETTING PAID FOR HIS INVOLVEMENT WITH  
11:26AM 2 MR. CAZARES AND PRIMO. AND THAT WOULD BE ON PAGE 58, AGAIN  
11:26AM 3 AT LINE 9.

11:26AM 4 THE COURT: OKAY. I SEE THAT.

11:26AM 5 MS. BATSON: AND, YOUR HONOR, YOU HAVE THE TRANSCRIPT  
11:26AM 6 OF THE RECORDING?

11:26AM 7 THE COURT: YES.

11:26AM 8 MS. BATSON: OKAY. IN THAT RECORDING, YOUR HONOR,  
11:26AM 9 JUST TO NOTE, WHEN THE DEFENDANT VEGA IS TALKING TO MR. CAZARES,  
11:26AM 10 HE DISCUSSES WITH MR. CAZARES THE FACT THAT THEY'RE THE ONES WHO  
11:26AM 11 HID THE BALLS IN THE LAUNDRY BASKET UPSTAIRS IN THE BEDROOM.

11:27AM 12 THE COURT: THE BALLS?

11:27AM 13 MS. BATSON: THE BALLS. THEY WERE LIKE FOOTBALLS.  
11:27AM 14 HE SAID THEY WERE SHAPED LIKE AMERICAN FOOTBALLS.

11:27AM 15 THE COURT: OKAY.

11:27AM 16 MS. BATSON: HE SAID THEY HID THOSE UPSTAIRS IN THE  
11:27AM 17 UPSTAIRS AT BRITON COURT. AND THEN HE TALKS ABOUT COOKING NOT  
11:27AM 18 ONCE BUT TWICE, MR. VEGA DOES. THEN WHEN MR. CAZARES SAYS,  
11:27AM 19 "WE NEED TO MOVE THOSE BALLS, BECAUSE MY EX-WIFE FOUND OUT  
11:27AM 20 AND SHE'S UPSET," MR. VEGA VOLUNTEERS TO MOVE THE BALLS TO  
11:27AM 21 ANOTHER LOCATION.

11:27AM 22 THE COURT: OKAY. COULD I GO THROUGH THIS REAL  
11:27AM 23 QUICK? THEN I'LL BE UP TO SPEED WITH YOU.

11:27AM 24 MS. BATSON: YES, YOUR HONOR.

11:28AM 25 THE COURT: OKAY. I SEE IN THE TRANSCRIPT OF THE

11:28AM 1 RECORDED PHONE CALL WHERE JUAN CARLOS VEGA SAYS TO RAMIRO  
11:28AM 2 CAZARES, "ALL RIGHT. WELL, CALL ME, MAN, IN CASE ANYTHING--IF  
11:28AM 3 YOU WANT ME TO GO OVER THERE OR SOMETHING. ANYWAY, I'M GONNA  
11:28AM 4 SEE IF I CAN DO THE COOKING." RIGHT? IS THAT WHAT YOU ARE  
11:29AM 5 REFERRING TO?

11:29AM 6 MS. BATSON: YES. THAT'S ON PAGE 3 OF GOVERNMENT'S  
11:29AM 7 EXHIBIT 53.

11:29AM 8 THE COURT: IT'S ON PAGE 2, ALSO.

11:29AM 9 MS. BATSON: 2 AND 3.

11:29AM 10 THE COURT: I'M SORRY. IT'S ON PAGE 3.

11:29AM 11 AND THEN CAZARES MENTIONS PRIMO, HE DOESN'T KNOW  
11:29AM 12 WHAT'S GOING ON, HE HASN'T GOTTEN ANY NEWS.

11:29AM 13 MS. BATSON: THEN HE ASKS JUAN CARLOS, "HAVE YOU  
11:29AM 14 FOUND OUT ANYTHING?" IN THAT SAME SENTENCE.

11:29AM 15 THE COURT: YEAH.

11:29AM 16 MS. BATSON: SO, CLEARLY, MR. VEGA HAS EQUAL ACCESS  
11:29AM 17 TO THE SAME INFORMATION THAT MR. CAZARES DOES. MR. VEGA SAYS  
11:30AM 18 THAT THEY HAVEN'T CALLED HIM EITHER.

11:30AM 19 THEN ON PAGE 4 IS THE CONVERSATION ABOUT THE BALLS.

11:30AM 20 THE COURT: YEAH. OKAY. WAS THERE OTHER TESTIMONY  
11:30AM 21 ABOUT THE BALLS?

11:30AM 22 MS. BATSON: YES, YOUR HONOR. I BELIEVE THAT AGENT  
11:30AM 23 MATA TESTIFIED THAT, AFTER SPEAKING WITH MR. VEGA, MR. VEGA  
11:30AM 24 TOLD HIM THAT THEY HAD HIDDEN THE BALLS IN THE LAUNDRY BASKET  
11:30AM 25 UPSTAIRS AT BRITON COURT. THERE WAS A SEARCH WARRANT EXECUTED

11:30AM 1 AT THAT LOCATION, AND THAT'S WHERE THE BALLS WERE. SO HOW ELSE  
11:30AM 2 WOULD MR. VEGA KNOW THAT THAT'S WHERE THEY HID THEM? AND  
11:30AM 3 THAT'S EXACTLY WHERE THEY WERE FOUND.

11:30AM 4 THE COURT: OKAY.

11:30AM 5 WELL, IN ADDITION TO WHAT YOU'VE POINTED OUT IN THE  
11:30AM 6 TRANSCRIPT OF RAMIRO CAZARES'S TESTIMONY, CAZARES SAYS, "WE  
11:31AM 7 DECIDED TO DO THAT TOGETHER. NO ONE FORCED HIM. HE TOOK THESE  
11:31AM 8 ACTIONS ON HIS OWN," TALKING ABOUT JUAN VEGA.

11:31AM 9 I HAVE IN MY NOTES, AND I'M SURE IT'S IN THIS  
11:31AM 10 TRANSCRIPT HERE, THAT CAZARES CALLED JUAN VEGA, WHO DROVE HIS  
11:31AM 11 HONDA TO MAKE THE PICKUP OF DRUGS.

11:31AM 12 MS. BATSON: YES, YOUR HONOR. AND WHAT MR. CAZARES  
11:31AM 13 TESTIFIED TO IS THAT WHILE HE WAS PUMPING GAS, MR. VEGA WENT  
11:31AM 14 OVER AND MET WITH THE PEOPLE, OBTAINED THE METHAMPHETAMINE,  
11:31AM 15 AND GOT BACK IN THE CAR AND SAID, YOU KNOW, "IT'S DONE." THEN  
11:31AM 16 THEY TOGETHER DROVE TO MR. VEGA'S APARTMENT, LOOKED AT THE  
11:31AM 17 METHAMPHETAMINE, SAW IT WAS METHAMPHETAMINE, LEFT IT IN THE  
11:31AM 18 CAR OVERNIGHT, AND THEN THEY DROVE IT TO BRITON COURT THE NEXT  
11:31AM 19 MORNING AND HID IT IN THE LAUNDRY BASKET WITH THE CLOTHES.

11:31AM 20 THE COURT: OKAY. AND THEN CAZARES TESTIFIED THAT  
11:32AM 21 HE AND JUAN VEGA COOKED METHAMPHETAMINE AT THE BRITON  
11:32AM 22 COURT HOUSE. THAT SUGGESTS A WORKING RELATIONSHIP.

11:32AM 23 MS. BATSON: IT WAS PRIMO WHO GAVE THEM THE  
11:32AM 24 INSTRUCTIONS ON HOW TO COOK.

11:32AM 25 THE COURT: THEN THERE WAS THE TESTIMONY OF AGENT

11:32AM 1 MATA, WHO SAID WHEN HE ARRESTED VEGA, VEGA GAVE A VOLUNTARY  
11:32AM 2 STATEMENT. VEGA SAID HE KNEW CAZARES AND THAT CAZARES'S SOURCE  
11:32AM 3 OF DRUGS WAS PRIMO. VEGA SAID HE WAS A RUNNER FOR CAZARES AND  
11:32AM 4 HE PICKED UP MONEY. AND MR. VEGA SAID HE KNEW THAT THE BLACK  
11:32AM 5 HONDA ACCORD HAD HIDDEN TRAPS.

11:32AM 6 SO, MR. PETRAZIO, I'M GOING TO DENY YOUR MOTION FOR  
11:32AM 7 JUDGMENT OF ACQUITTAL. I THINK THERE IS EVIDENCE UPON WHICH  
11:32AM 8 A JURY COULD RELY TO BASE A VERDICT OF GUILTY.

11:32AM 9 MR. PETRAZIO: THANK YOU, YOUR HONOR.

11:32AM 10 THE COURT: ALL RIGHT.

11:32AM 11 I'M DENYING THE RULE 29 MOTIONS.

11:32AM 12 THE GOVERNMENT HAS RESTED.

11:32AM 13 I'M GOING TO BRING THE JURY BACK OUT HERE. EACH  
11:33AM 14 DEFENSE COUNSEL SHOULD STAND AND ANNOUNCE TO THE JURY THAT YOU  
11:33AM 15 HAVE ALSO RESTED, UNLESS YOU HAVE WITNESSES, UNLESS SOMETHING  
11:33AM 16 HAS CHANGED. OKAY.

11:33AM 17 SO WE'LL DO THAT. THEN I'LL LET THE JURY GO UNTIL  
11:33AM 18 PROBABLY--I'M THINKING--IT TAKES ME A LITTLE WHILE TO PUT THE  
11:33AM 19 CHARGE TOGETHER, AND THEN YOU'LL NEED TIME TO LOOK AT IT. IT'S  
11:33AM 20 11:30. I WAS THINKING ABOUT BRINGING THEM BACK AT 2:00. WHAT  
11:33AM 21 DO COUNSEL FEEL ABOUT THAT? THEN HAVE FINAL ARGUMENTS AT 2:00.  
11:33AM 22 THAT'S ABOUT AS QUICK AS WE COULD DO IT. AND IT DEPENDS ON HOW  
11:33AM 23 MUCH TIME YOU WANT FOR FINAL ARGUMENTS.

11:34AM 24 MR. KEMP: WELL, YOUR HONOR, IN TALKING WITH  
11:34AM 25 MS. BATSON, I THINK THAT WE'RE LOOKING AT PROBABLY THREE HOURS

11:34AM 1 IN TERMS OF ACTUAL CLOSING-ARGUMENT TIME, DIVIDED AMONG THE  
11:34AM 2 FOUR OF US.

11:34AM 3 THE COURT: OKAY. SO SHALL WE BRING THEM BACK  
11:34AM 4 TOMORROW?

11:34AM 5 MR. WHALEN: I THINK THAT MAY BE BEST, JUST BECAUSE  
11:34AM 6 IF WE GET INTO A SITUATION WHERE THE CHARGE TAKES A LONG TIME,  
11:34AM 7 TO HAVE THE GOVERNMENT ARGUE FIRST AND HAVE US COME BACK THE  
11:34AM 8 FIRST DAY, I THINK--

11:34AM 9 THE COURT: YEAH, I THINK IT WOULD BE BETTER IF YOU  
11:34AM 10 ARGUED ON THE SAME DAY. OKAY. THEY LIKE TO GO HOME AT 5:00.  
11:34AM 11 SO I'M GOING TO BRING THEM OUT HERE AND LET ALL DEFENDANTS  
11:34AM 12 REST. I'LL TELL THE JURY, "ALL OF THE EVIDENCE IS NOW BEFORE  
11:34AM 13 YOU. THE NEXT STEP IS FOR ME TO PREPARE THE JURY INSTRUCTIONS  
11:34AM 14 AND HAVE A CONFERENCE WITH COUNSEL. AND WE WON'T HAVE ENOUGH  
11:35AM 15 TIME THIS AFTERNOON TO BOTH ARGUE AND FOR YOU TO DELIBERATE."  
11:35AM 16 OKAY? IS THAT AGREEABLE?

11:35AM 17 MR. WHALEN: IT IS, YOUR HONOR.

11:35AM 18 MR. KEMP: YES, YOUR HONOR.

11:35AM 19 MS. BATSON: YES, YOUR HONOR.

11:35AM 20 MR. PETRAZIO: YES, YOUR HONOR.

11:35AM 21 THE COURT: OKAY. GREAT.

11:35AM 22 MR. WHALEN: DO YOU WANT US TO PUT ON THE RECORD  
11:35AM 23 BRIEFLY THAT MR. BOWEN UNDERSTANDS HIS RIGHT TO TESTIFY OR  
11:35AM 24 NOT TESTIFY, AND HE'S ELECTING TO NOT TESTIFY?

11:35AM 25 THE COURT: YOU WANT TO ASK HIM THAT?

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11:35AM 1 MR. WHALEN: YES. CAN I?

11:35AM 2 THE COURT: SURE. YOU WILL NEED A MICROPHONE.

11:35AM 3 MR. WHALEN: SHALL I JUST HAVE HIM GO TO THE PODIUM?

11:35AM 4 THE COURT: SURE. THAT WILL BE FINE.

11:35AM 5 MR. WHALEN: DOES HE NEED TO BE SWORN?

11:35AM 6 THE COURT: YES.

11:35AM 7 MR. BOWEN, WOULD YOU RAISE YOUR RIGHT HAND?

11:35AM 8 THE WITNESS: IT'S AGAINST MY RELIGION TO SWEAR.

11:35AM 9 THE COURT: DO WHAT?

11:35AM 10 THE WITNESS: IT'S AGAINST MY RELIGION TO SWEAR.

11:35AM 11 THE COURT: I'M NOT GOING TO ASK YOU TO SWEAR.

11:36AM 12 I'M GOING TO ASK YOU TO AFFIRM.

11:36AM 13 THE WITNESS: ALL RIGHT.

11:36AM 14 DEPUTY CLERK: YOU DO AFFIRM THAT THE TESTIMONY

11:36AM 15 YOU SHALL GIVE IN THIS CASE NOW IN HEARING SHALL BE THE TRUTH,

11:36AM 16 THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP YOU GOD.

11:36AM 17 THE WITNESS: YES.

11:36AM 18 EXAMINATION OF TIMOTHY LEDON BOWEN

11:36AM 19 MR. WHALEN:

11:36AM 20 Q. STATE YOUR NAME FOR THE RECORD AND FOR THE COURT.

11:36AM 21 A. TIMOTHY LEDON BOWEN.

11:36AM 22 Q. TIM, WE DISCUSSED YOUR RIGHT TO TESTIFY, IS THAT

11:36AM 23 CORRECT?

11:36AM 24 A. YES.

11:36AM 25 Q. YOU UNDERSTAND THAT IT'S YOUR RIGHT AND YOUR RIGHT

11:36AM 1 ALONE, IS THAT RIGHT?

11:36AM 2 A. YES.

11:36AM 3 Q. AND BASED ON OUR DISCUSSIONS, YOU HAVE ELECTED NOT TO  
11:36AM 4 TESTIFY AT YOUR TRIAL, IS THAT RIGHT?

11:36AM 5 A. YES.

11:36AM 6 Q. AND THAT WAS A DECISION THAT YOU MADE ON YOUR OWN,  
11:36AM 7 FREELY AND VOLUNTARILY, IS THAT CORRECT?

11:36AM 8 A. YES.

11:36AM 9 MR. WHALEN: THANK YOU.

11:36AM 10 THAT'S ALL I HAVE, YOUR HONOR.

11:41AM 11 THE COURT: MR. PETRAZIO?

11:41AM 12 MR. PETRAZIO: YOUR HONOR, I WOULD LIKE A MOMENT  
11:41AM 13 ALONE WITH THE INTERPRETER TO DISCUSS THE SAME ISSUE.

11:41AM 14 THE COURT: OKAY.

11:41AM 15 MR. PETRAZIO: YOUR HONOR, AFTER HAVING SPOKEN  
11:41AM 16 WITH MR. VEGA AND ADVISING HIM OF HIS RIGHT TO TESTIFY, AND MY  
11:41AM 17 COUNSEL WITH RESPECT TO THAT, HE HAS CHOSEN TO WAIVE HIS RIGHT  
11:41AM 18 TO TESTIFY ON HIS OWN BEHALF.

11:41AM 19 THE COURT: ALL RIGHT. OKAY.

11:41AM 20 MR. KEMP?

11:41AM 21 MR. KEMP: WITH RESPECT TO MR. SALAZAR, WE, TOO,  
11:41AM 22 HAVE DISCUSSED AD NAUSEAM HIS RIGHT TO TESTIFY, AND HE BELIEVES  
11:41AM 23 IT'S IN HIS BEST INTEREST NOT TO TESTIFY AT THIS POINT, AND  
11:41AM 24 HE'S NOT GOING TO DO SO.

11:41AM 25 THE COURT: OKAY. THANK YOU.

11:41AM 1 I'M GOING TO BRING IN THE JURY.

11:41AM 2 MR. HOLLIS, GO AHEAD.

11:42AM 3 COURT SECURITY OFFICER: ALL RISE.

11:43AM 4 [OPEN COURT, DEFENDANTS AND JURY PRESENT]

11:43AM 5 THE COURT: ALL RIGHT. BE SEATED, PLEASE.

11:43AM 6 LADIES AND GENTLEMEN, AS I TOLD YOU, THE GOVERNMENT

11:43AM 7 HAS RESTED ITS CASE-IN-CHIEF.

11:43AM 8 MR. KEMP, WHAT SAYS MR. SALAZAR?

11:43AM 9 MR. KEMP: YOUR HONOR, ON BEHALF OF MR. SALAZAR, AT

11:43AM 10 THIS TIME THE DEFENSE RESTS.

11:43AM 11 THE COURT: ALL RIGHT. THANK YOU.

11:43AM 12 MR. WHALEN?

11:43AM 13 MR. WHALEN: ON BEHALF OF TIMOTHY LEDON BOWEN, WE

11:43AM 14 REST.

11:43AM 15 THE COURT: OKAY.

11:43AM 16 MR. PETRAZIO: YOUR HONOR, ON BEHALF OF JUAN CARLOS

11:43AM 17 VEGA, WE REST.

11:43AM 18 THE COURT: ALL RIGHT. THANK YOU.

11:43AM 19 LADIES AND GENTLEMEN, ALL OF THE EVIDENCE IS NOW

11:43AM 20 BEFORE YOU IN THIS CASE. THE NEXT STEP IS FOR THE COURT TO

11:43AM 21 PREPARE JURY INSTRUCTIONS. AFTER I HAVE PREPARED THE JURY

11:43AM 22 INSTRUCTIONS, THEN I'LL CONDUCT A HEARING WITH ALL COUNSEL

11:43AM 23 TO GIVE THEM AN OPPORTUNITY TO REVIEW MY DRAFT OF THE JURY

11:43AM 24 INSTRUCTIONS AND TO MAKE ANY REQUESTS THEY MIGHT HAVE FOR

11:43AM 25 CHANGES TO THE INSTRUCTIONS. THAT PROCESS WILL TAKE AT LEAST

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11:43AM 1 TWO HOURS, PROBABLY TWO AND A HALF OR THREE HOURS. SO BY THE  
11:44AM 2 TIME WE FINISH THAT AND THEN BEGIN FINAL ARGUMENTS--AND THERE  
11:44AM 3 ARE FOUR LAWYERS WHO WILL BE MAKING FINAL ARGUMENTS TO YOU, SO  
11:44AM 4 THAT PROCESS WILL TAKE PROBABLY SEVERAL HOURS--THEN WE WOULD BE  
11:44AM 5 RIGHT AT 5:00 OR EVEN AFTER. AND I KNOW THAT SOME OF YOU NEED  
11:44AM 6 TO LEAVE AT 5:00. SO WE'RE GOING TO RECESS FOR TODAY. I WILL  
11:44AM 7 WORK ON THE JURY INSTRUCTIONS. I'LL HAVE A HEARING LATER THIS  
11:44AM 8 AFTERNOON WITH COUNSEL TO GO OVER THOSE INSTRUCTIONS AND GET  
11:44AM 9 THEM FINALIZED, AND THEN WE'LL START WITH FINAL ARGUMENTS IN  
11:44AM 10 THE MORNING.

11:44AM 11 ALL RIGHT, LADIES AND GENTLEMEN.

11:44AM 12 OH, AND I WILL EXPLAIN TO YOU THE HOUR AND 45  
11:44AM 13 MINUTES THAT YOU WERE IN THE JURY ROOM JUST NOW. I'LL EXPLAIN  
11:44AM 14 THAT PROCESS TO YOU AFTER THE TRIAL.

11:44AM 15 THE ONLY OTHER THING I WANT TO SAY IS, JUROR NUMBER  
11:44AM 16 2, I DID GET YOUR NOTE. I DON'T THINK THERE WILL BE ANY  
11:44AM 17 CONFLICT WITH YOUR APPOINTMENTS NEXT WEEK.

11:45AM 18 OKAY, LADIES AND GENTLEMEN. AGAIN THANK YOU FOR  
11:45AM 19 YOUR TIME AND ATTENTION. I'LL SEE YOU TOMORROW MORNING AT  
11:45AM 20 9 AM.

11:45AM 21 COURT SECURITY OFFICER: ALL RISE.

11:45AM 22 [OPEN COURT, DEFENDANTS PRESENT, JURY NOT PRESENT]

11:45AM 23 THE COURT: ALL RIGHT. I THINK WHAT WE'LL DO IS  
11:45AM 24 RECESS UNTIL--LET ME HAVE COUNSEL COME BACK AT--I CAN PROBABLY  
11:45AM 25 HAVE IT DONE BY 2:00. THAT WILL GIVE ME TWO HOURS AND 15

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11:45AM 1 MINUTES. IS 2:00 OKAY?

11:46AM 2 SIMULTANEOUS VOICES: THAT'S FINE.

11:46AM 3 THE COURT: OKAY. I'LL SEE YOU BACK AT 2:00. DO

11:46AM 4 YOU WANT THE DEFENDANTS BACK HERE FOR THE CHARGE CONFERENCE?

11:46AM 5 IT DOESN'T MATTER TO ME.

11:46AM 6 MR. WHALEN: ON BEHALF OF MR. BOWEN, HE'LL WAIVE HIS

11:46AM 7 PRESENCE AT THAT HEARING, YOUR HONOR.

11:46AM 8 THE COURT: OKAY.

11:46AM 9 MR. PETRAZIO: MR. VEGA WAIVES HIS RIGHT TO BE

11:46AM 10 PRESENT FOR THAT PARTICULAR CONFERENCE, YOUR HONOR.

11:46AM 11 THE COURT: OKAY.

11:46AM 12 MR. KEMP: YOUR HONOR, MR. SALAZAR WAIVES HIS

11:46AM 13 APPEARANCE FOR THE CONFERENCE AS WELL.

11:46AM 14 THE COURT: OKAY. THEN, I'LL TELL THE MARSHALS

11:46AM 15 THAT THEY CAN TAKE MR. SALAZAR, MR. BOWEN AND MR. VEGA BACK

11:46AM 16 TO WHEREVER THEY ARE BEING HOUSED. JUST HAVE THEM BACK HERE

11:46AM 17 TOMORROW MORNING BY 9:00.

11:47AM 18 OKAY. THANK YOU. WE'LL RECESS UNTIL 2:00 THIS

11:47AM 19 AFTERNOON.

02:35PM 20 [RECESS]

02:35PM 21 [OPEN COURT, NEITHER DEFENDANTS NOR JURY PRESENT]

02:35PM 22 THE COURT: KEEP YOUR SEATS.

02:40PM 23 Y'ALL JUST LET ME KNOW WHEN YOU ARE READY.

02:52PM 24 MR. GONZALEZ AND MS. BATSON, ARE YOU READY, OR ARE

02:52PM 25 YOU STILL WORKING ON IT?

02:52PM 1 MR. GONZALEZ: I'M READY.

02:52PM 2 THE COURT: LET'S GO ON THE RECORD.

02:52PM 3 TO THE PROPOSED JURY INSTRUCTIONS, ARE THERE

02:52PM 4 OBJECTIONS BY THE GOVERNMENT?

02:52PM 5 MR. GONZALEZ: YOUR HONOR, THE FIRST QUESTION I

02:52PM 6 HAVE IS ON PAGE 5, THE ACCOMPLICE/CODEFENDANT PLEA-AGREEMENT

02:52PM 7 SECTION.

02:52PM 8 THE COURT: OKAY.

02:52PM 9 MR. GONZALEZ: I THINK THAT ADDRESSES CODEFENDANTS,

02:52PM 10 BUT THERE WERE OTHERS WHO WEREN'T CODEFENDANTS. FOR EXAMPLE--

02:52PM 11 THE COURT: I CHANGED THE WORDING. I JUST GROUPED

02:52PM 12 THEM ALL AS ACCOMPLICES, WHICH WOULD INCLUDE CODEFENDANTS, I

02:52PM 13 BELIEVE.

02:52PM 14 MR. GONZALEZ: OKAY. WELL, IT SAYS "SOME OF WHOM"

02:52PM 15 WERE NAMED AS CODEFENDANTS."

02:52PM 16 THE COURT: RIGHT. SOME OF YOUR WITNESSES ARE

02:52PM 17 CODEFENDANTS, SOME AREN'T.

02:52PM 18 MR. GONZALEZ: OKAY. I SEE WHAT YOU DID.

02:53PM 19 THE COURT: THERE MAY BE OTHER LANGUAGE FROM 1.14

02:53PM 20 ON ACCOMPLICE-INFORMER IMMUNITY THAT COULD BE PUT IN THERE.

02:53PM 21 I'M NOT SURE ANYBODY HAS BEEN GIVEN IMMUNITY. I DIDN'T

02:53PM 22 HEAR ANYTHING ABOUT THAT. SOME OF THEM DID TESTIFY THAT THE

02:53PM 23 GOVERNMENT HAD AGREED NOT TO PROSECUTE THEM IF THEY TESTIFIED.

02:53PM 24 MR. GONZALEZ: OKAY.

02:53PM 25 YOUR HONOR, THEN, ON PAGE 10, WHERE IT SAYS "COUNT 1

02:53PM 1 OF THE SECOND SUPERSEDING INDICTMENT CHARGES"--AND IT HAS THE  
02:54PM 2 DEFENDANTS--AND IT SAYS, "DID KNOWINGLY AND INTENTIONALLY  
02:54PM 3 COMBINE, CONSPIRE AND AGREE WITH EACH OTHER AND OTHER PERSONS  
02:54PM 4 KNOWN AND UNKNOWN TO THE UNITED STATES GRAND JURY, TO KNOWINGLY  
02:54PM 5 AND INTENTIONALLY POSSESS WITH THE INTENT TO DISTRIBUTE"--  
02:54PM 6 I THINK THE INDICTMENT SAYS "MANUFACTURE AND DISTRIBUTE" OR  
02:54PM 7 "DISTRIBUTE AND MANUFACTURE," ONE OF THE TWO. I THINK IT'S  
02:54PM 8 "MANUFACTURE AND DISTRIBUTE." SO, OBVIOUSLY, IN ORDER FOR IT  
02:54PM 9 TO TRACK THE INDICTMENT...

02:54PM 10 THE COURT: I DON'T SEE "MANUFACTURE" IN THERE.

02:55PM 11 MR. GONZALEZ: THAT'S FINE. IT DOES SAY IT IN THE  
02:55PM 12 CAPTION ON TOP, IT JUST DOESN'T SAY IT IN THE BODY.

02:55PM 13 THE COURT: OKAY.

02:55PM 14 MR. GONZALEZ: IN THE CAPTION IT SAYS, "CONSPIRACY  
02:55PM 15 TO POSSESS WITH THE INTENT TO MANUFACTURE AND DISTRIBUTE  
02:55PM 16 METHAMPHETAMINE," BUT IN THE BODY, YOU ARE CORRECT, YOUR HONOR,  
02:55PM 17 IT JUST SAYS "DISTRIBUTE."

02:55PM 18 THE COURT: IF Y'ALL CAN AGREE ON SOMETHING--I WAS  
02:55PM 19 JUST GOING BY WHAT'S ALLEGED IN THE BODY. I DIDN'T EVEN LOOK  
02:55PM 20 AT THE CAPTION.

02:55PM 21 MR. GONZALEZ: AND I THINK THAT'S PROBABLY CORRECT.  
02:55PM 22 I THINK THAT'S CONTROLLING. SO I THINK THAT TECHNICALLY IS  
02:55PM 23 CORRECT.

02:55PM 24 THE COURT: WELL, THEN, I PROBABLY NEED TO ASK  
02:55PM 25 MS. SANFORD, WHEN SHE SENDS A COPY OF THE SECOND SUPERSEDING

02:55PM 1 INDICTMENT BACK TO THE JURY, TO TAKE OUT NOT ONLY THE  
02:55PM 2 FORFEITURE NOTICE BUT ALSO THE CAPTION.

02:55PM 3 MR. GONZALEZ: I JUST DON'T WANT ANY QUESTIONS FROM  
02:55PM 4 THE JURY LATER ON ABOUT THAT ISSUE.

02:56PM 5 THE COURT: YEAH.

02:56PM 6 ANY OBJECTION TO TAKING OUT THE CAPTION THAT  
02:56PM 7 REFERS TO "DISTRIBUTION"? I MEAN, THERE'S NO ALLEGATION OF  
02:56PM 8 DISTRIBUTION IN THE WORDING OF COUNT 1 OTHER THAN IN THE  
02:56PM 9 PARENTHETICAL PORTION OF THE CAPTION.

02:56PM 10 MR. WHALEN: THE "MANUFACTURE"?

02:56PM 11 THE COURT: I'M SORRY. YEAH, "MANUFACTURING." TAKE  
02:56PM 12 OUT THE CAPTIONING THAT REFERS TO "MANUFACTURING" WHEN THERE'S  
02:56PM 13 NO REFERENCE TO THAT IN THE REST OF COUNT 1.

02:56PM 14 MR. WHALEN: I'D HAVE NO OBJECTIONS TO THAT.

02:56PM 15 MR. KEMP: I'D HAVE NO OBJECTION TO THAT EITHER.

02:56PM 16 MR. PETRAZIO: NO OBJECTION.

02:56PM 17 THE COURT: OKAY.

02:56PM 18 MS. SANFORD, WOULD YOU TAKE OUT THAT CAPTION THERE.

02:56PM 19 DEPUTY COURT CLERK: YES.

02:57PM 20 THE COURT: WHAT ELSE, MR. GONZALEZ?

02:57PM 21 MR. GONZALEZ: AND I THINK IN THE ELEMENTS, YOUR  
02:57PM 22 HONOR, IT TALKS ABOUT "METHAMPHETAMINE (ACTUAL)" BEFORE  
02:57PM 23 "MIXTURE." I KNOW THAT THAT'S JUST STYLISTIC. IN REGARDS  
02:57PM 24 TO, ONCE AGAIN, WHAT'S CONSTRUCTED ABOVE, AS OPPOSED TO WHAT'S  
02:57PM 25 IN THE ELEMENTS. THEY'RE IN REVERSE ORDER. WE TALKED ABOUT

02:57PM 1 MIXTURE FIRST, AND THAT'S THE WAY IT'S IN THE INDICTMENT.

02:57PM 2 THE COURT: ALL RIGHT. NOW, WAIT A MINUTE. LET'S  
02:58PM 3 SEE. OH, OKAY. THE INDICTMENT ALLEGES "MIXTURE" FIRST AND  
02:58PM 4 THEN "ACTUAL"?

02:58PM 5 MR. GONZALEZ: CORRECT. AND THAT'S HOW YOU  
02:58PM 6 INSTRUCTED ABOVE, ALSO. RIGHT BEFORE THAT, IN THE PARAGRAPH  
02:58PM 7 ABOVE, YOU SAY "500 GRAMS OR MORE OF A MIXTURE OR SUBSTANCE  
02:58PM 8 CONTAINING A DETECTABLE AMOUNT OF METHAMPHETAMINE AND/OR 50  
02:58PM 9 GRAMS--IT DOESN'T MAKE A DIFFERENCE. I'M JUST POINTING THAT  
02:58PM 10 OUT.

02:58PM 11 THE COURT: YEAH, I DON'T KNOW THAT IT MATTERS, BUT  
02:58PM 12 I MEAN, I CAN INVERT THAT IF YOU WANT ME TO.

02:58PM 13 MR. GONZALEZ: OKAY.

02:58PM 14 THE COURT: I DON'T THINK IT'S A BIG DEAL.

02:58PM 15 MR. GONZALEZ: RIGHT. I WAS JUST POINTING THAT OUT  
02:58PM 16 TO THE COURT THAT THAT WAS DIFFERENT.

02:58PM 17 THE COURT: OKAY.

02:58PM 18 MR. GONZALEZ: NOW, IN THE JURY VERDICT, YOUR HONOR,  
02:59PM 19 I DON'T THINK WE NEED THE PORTION WHERE IT SAYS, "SO IF YOU  
02:59PM 20 HAVE FOUND THE DEFENDANT RENE CORTEZ SALAZAR GUILTY, YOU MUST  
02:59PM 21 ANSWER THE FOLLOWING QUESTION," AND THEN IT GOES TO "1. DO  
02:59PM 22 YOU FIND BEYOND A REASONABLE DOUBT THAT THE CONSPIRACY ALLEGED  
02:59PM 23 INVOLVED A MIXTURE OR SUBSTANCE CONTAINING DETECTABLE AMOUNTS  
02:59PM 24 OF METHAMPHETAMINE OR ACTUAL METHAMPHETAMINE?" BECAUSE IF THEY  
02:59PM 25 FIND HIM GUILTY OF COUNT 1, I THINK THAT APPLIES TO A SITUATION

02:59PM 1 WHERE YOU HAVE MULTIPLE DRUGS ALLEGED IN ONE COUNT AND,  
02:59PM 2 THEREFORE, YOU ARE HAVING THEM GO THROUGH EACH ONE AND HAVING  
02:59PM 3 THEM--FOR EXAMPLE, IF THEY HAD ALLEGED--IF WE HAD ALLEGED  
02:59PM 4 MARIJUANA AND METHAMPHETAMINE, HAVING THEM FIND THAT HE WAS  
02:59PM 5 INVOLVED WITH MARIJUANA, THEN FINDING THE QUANTITY, HAVING THEM  
02:59PM 6 FIND--AND SO ON AND SO FORTH. SO I DON'T THINK WE NEED THAT  
02:59PM 7 PARTICULAR QUESTION. I THINK IT'S REDUNDANT.

02:59PM 8 THE COURT: OKAY. I'M TRYING TO THINK OF--LET'S  
02:59PM 9 SEE. WHY DID I HAVE THAT?

02:59PM 10 MR. GONZALEZ: I THINK MS. RATTAN TYPICALLY CHARGES  
03:00PM 11 MORE THAN ONE DRUG IN HER INDICTMENTS. SHE DOESN'T SEPARATE  
03:00PM 12 THEM OUT LIKE I DO. SO I THINK MAYBE THAT'S WHERE THAT CAME  
03:00PM 13 FROM.

03:00PM 14 THE COURT: LET'S SEE. YES, YOU ARE RIGHT. THE  
03:00PM 15 CASE THAT I TRIED--ONE OF THE CASES I TRIED IN NOVEMBER  
03:00PM 16 INVOLVED TWO DIFFERENT DRUGS.

03:00PM 17 MR. GONZALEZ: CORRECT. AND THAT'S WHEN YOU HAVE  
03:00PM 18 THE SAME DRUG IN ONE COUNT AND YOU HAVE TO--I MEAN, I GUESS  
03:00PM 19 THE JURY COULD FIND TWO--ONE DRUG AND NOT THE OTHER.

03:00PM 20 THE COURT: OH, OKAY. I'M TOLD THAT YOUR PROPOSED  
03:00PM 21 INSTRUCTION CAME LIKE THIS.

03:00PM 22 MR. GONZALEZ: IF IT DID, I APOLOGIZE FOR THAT.

03:00PM 23 THE COURT: BUT I THINK YOU ARE RIGHT. I DON'T  
03:00PM 24 THINK THERE'S A NEED TO ASK THAT. IF THEY FOUND HIM GUILTY,  
03:00PM 25 THAT'S IN THE INDICTMENT ITSELF.

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03:00PM 1 MR. GONZALEZ: CORRECT. IF THEY FOUND HIM GUILTY OF  
03:00PM 2 THE METHAMPHETAMINE. SO THE ONLY QUESTION LEFT IS THE QUANTITY.

03:01PM 3 THE COURT: YES. OKAY. LET'S SEE. WELL, IT'S OKAY  
03:01PM 4 TO LEAVE IN THE SENTENCE, THEN, "SO IF YOU FOUND THE DEFENDANT  
03:01PM 5 RENE CORTEZ SALAZAR GUILTY OF COUNT 1 OF THE SUPERSEDING  
03:01PM 6 INDICTMENT, YOU MUST ANSWER THE FOLLOWING QUESTION." AND THEN  
03:01PM 7 WE COULD JUST START WITH "PLEASE INDICATE YOUR FINDING OF THE  
03:01PM 8 QUANTITY INVOLVED IN THE CONSPIRACY."

03:01PM 9 MR. GONZALEZ: YES, SIR.

03:01PM 10 THE COURT: OKAY. ALL RIGHT. THAT MAKES SENSE.  
03:01PM 11 THANK YOU.

03:01PM 12 MR. GONZALEZ: AND FINALLY, YOUR HONOR, IN REGARDS  
03:01PM 13 TO "MULTIPLE CONSPIRACIES," I WOULD ARGUE THAT THEY'RE NOT  
03:01PM 14 MULTIPLE CONSPIRACIES; THERE'S ONLY ONE CONSPIRACY HERE,  
03:01PM 15 AND THE EVIDENCE HAS ONLY INDICATED ONE CONSPIRACY.

03:02PM 16 THE COURT: OKAY. I THINK MR. WHALEN ASKED FOR  
03:02PM 17 THAT.

03:02PM 18 MR. GONZALEZ: YOUR HONOR, I WOULD SIMPLY ARGUE THAT  
03:02PM 19 IT'S THE NATURE AND SCOPE OF THE AGREEMENT THAT DISTINGUISHES  
03:02PM 20 BETWEEN A SINGLE CONSPIRACY AND MULTIPLE CONSPIRACIES AND THAT  
03:02PM 21 IT IS THE COMMON CRIMINAL OBJECTIVE THAT DETERMINES WHETHER  
03:02PM 22 IT'S ONE CONSPIRACY OR A SECOND CONSPIRACY, OR TWO CONSPIRACIES.  
03:02PM 23 ALSO, THE CASE LAW INDICATES THAT THERE ARE THREE FACTORS  
03:02PM 24 TO BE CONSIDERED IN DETERMINING WHETHER THERE'S A SINGLE OR  
03:02PM 25 MULTIPLE CONSPIRACIES:

03:02PM 1 FIRST, WHAT WAS THE COMMON GOAL OF THE CRIMINAL  
03:02PM 2 AGREEMENT?  
03:02PM 3 SECONDLY, WHAT WAS THE NATURE OF THE AGREEMENT?  
03:02PM 4 THIRD, DO THE NETWORK ACTIVITIES OF THE PARTICIPANTS  
03:02PM 5 OVERLAP?  
03:02PM 6 THOSE ARE THE--WHAT SOME OF THE CASE LAW SAYS YOU  
03:02PM 7 SHOULD LOOK AT.  
03:02PM 8 IN REGARDS TO THE FIRST FACTOR, THE COMMON GOAL  
03:03PM 9 IN THIS CONSPIRACY WAS TO PURCHASE METHAMPHETAMINE IN DALLAS,  
03:03PM 10 TRANSPORT IT TO SHERMAN AND DENISON, AND DISTRIBUTE IT THERE.  
03:03PM 11 THAT WAS THE COMMON GOAL OF ALL THE PEOPLE THAT WERE INVOLVED  
03:03PM 12 HERE. THERE WERE TWO SEPARATE SOURCES OF SUPPLY, BUT THE  
03:03PM 13 COMMON GOAL WAS THAT, OBTAIN METHAMPHETAMINE IN DALLAS,  
03:03PM 14 TRANSPORT IT TO SHERMAN-DENISON, AND DISTRIBUTE IT THERE,  
03:03PM 15 AND THEN DO THAT ALL OVER AGAIN.  
03:03PM 16 AND IN REGARDS TO THE SECOND FACTOR OR SECOND  
03:03PM 17 CONSIDERATION, "WHAT WAS THE NATURE OF THE AGREEMENT," THE  
03:03PM 18 NATURE OF THE AGREEMENT WAS: SELL THE METHAMPHETAMINE IN  
03:03PM 19 SHERMAN-DENISON, GET THE MONEY, AND TAKE IT TO THE TWO  
03:03PM 20 SUPPLIERS.  
03:03PM 21 AND DURING THE TESTIMONY, WHAT THE WITNESSES SAID  
03:03PM 22 IS THAT THEY WENT FROM ONE SUPPLIER TO ANOTHER SUPPLIER BECAUSE  
03:03PM 23 THE MONEY--OR THE COST WAS CHEAPER ONE TO THE OTHER. BUT  
03:03PM 24 DURING THE CONSPIRACY, THERE WAS TIMES WHERE THEY WERE GETTING  
03:03PM 25 SOME FROM EITHER OF THE SUPPLIERS. BECAUSE THE COMMON GOAL AND

03:04PM 1 OBJECTIVE WAS, ONCE AGAIN, TO DISTRIBUTE THE METHAMPHETAMINE IN  
03:04PM 2 SHERMAN-DENISON.

03:04PM 3 AND LASTLY, DO THE NETWORK ACTIVITIES OR THE  
03:04PM 4 PARTICIPANTS OVERLAP? WELL, THE ONLY OVERLAP THAT OCCURS IS  
03:04PM 5 GOING BACK AND FORTH BETWEEN THE SUPPLIERS. I KNOW THAT THERE  
03:04PM 6 WAS SOME TESTIMONY ABOUT SOME OF THESE INDIVIDUALS GETTING  
03:04PM 7 SUPPLIED BY OTHER PEOPLE BEFORE THEY JOINED THIS GROUP, BUT I  
03:04PM 8 THINK THE BULK OF THE TESTIMONY HERE WAS IT WAS THIS GROUP OF  
03:04PM 9 PEOPLE THAT KEPT BEING MENTIONED OVER AND OVER AND OVER AGAIN  
03:04PM 10 DEALING TOGETHER, WORKING TOGETHER FOR THAT COMMON GOAL AND  
03:04PM 11 OBJECTIVE, WHICH WAS THE DISTRIBUTION OF THE METHAMPHETAMINE  
03:04PM 12 IN SHERMAN-DENISON. SO THERE'S ONLY ONE CONSPIRACY HERE, NOT  
03:04PM 13 MULTIPLE CONSPIRACIES.

03:04PM 14 THE COURT: AND THE TWO SUPPLIERS BEING FERNANDO  
03:04PM 15 PERALES AND PRIMO?

03:04PM 16 MR. GONZALEZ: THE TWO SUPPLIERS BEING FERNANDO  
03:04PM 17 PERALES AND ANDY NGUYEN.

03:04PM 18 THE COURT: WELL, ANDY NGUYEN GOT HIS DRUGS FROM  
03:05PM 19 PRIMO. RIGHT?

03:05PM 20 MR. GONZALEZ: CORRECT. BUT NONE OF THE--AND I  
03:05PM 21 SAY "THE TWO SUPPLIERS" HERE BECAUSE NONE OF THE PARTICIPANTS  
03:05PM 22 IN--THAT TESTIFIED ACTUALLY RECEIVED IT DIRECTLY FROM PRIMO  
03:05PM 23 OR ACTUALLY RECEIVED IT DIRECTLY FROM PELON, WHO WAS FERNANDO  
03:05PM 24 PERALES'S SUPPLIER IN MEXICO, BECAUSE THOSE INDIVIDUALS WERE IN  
03:05PM 25 MEXICO, OBVIOUSLY.

03:05PM 1 THE COURT: YEAH. OKAY.

03:05PM 2 MR. GONZALEZ: AND IF THE COURT WISHES, I HAVE

03:05PM 3 SOME CITES. I HAVE SOME FIFTH CIRCUIT CITES AS WELL AS OTHER

03:05PM 4 CIRCUITS THAT HAVE WHAT I'VE JUST ARTICULATED TO THE COURT.

03:05PM 5 THE COURT: OKAY. ALL RIGHT. IS THAT IT FOR THE

03:05PM 6 GOVERNMENT?

03:05PM 7 MR. GONZALEZ: YES, YOUR HONOR, IT IS.

03:05PM 8 THE COURT: OKAY.

03:05PM 9 WHO WANTS TO SPEAK FIRST FOR THE DEFENSE?

03:05PM 10 MR. WHALEN: I WILL, YOUR HONOR.

03:06PM 11 THE COURT: OKAY.

03:06PM 12 MR. WHALEN: WOULD YOU LIKE ME TO RESPOND TO THE

03:06PM 13 MULTIPLE-CONSPIRACIES ARGUMENT?

03:06PM 14 THE COURT: YES.

03:06PM 15 MR. WHALEN: OKAY. YOUR HONOR, I THINK IF YOU LOOK

03:06PM 16 AT THE TESTIMONY THAT YOU HAVE AND THE EVIDENCE THAT YOU HAVE,

03:06PM 17 I THINK THERE IS EVIDENCE THAT THERE ARE MULTIPLE CONSPIRACIES.

03:06PM 18 I THINK IT'S TOO SIMPLISTIC TO THEN SAY THAT THE OVERALL SCHEME

03:06PM 19 WAS TO GET METHAMPHETAMINE IN DALLAS AND TAKE IT TO THE

03:06PM 20 SHERMAN-DENISON AREA. I THINK THE THING THAT--IF THAT IS

03:06PM 21 THE AGREEMENT, I THINK THAT'S AN OVERSIMPLIFICATION OF THE

03:06PM 22 AGREEMENT. EACH PART HAS A DIFFERENT AGREEMENT. AND I THINK

03:06PM 23 IF YOU LOOK AT THE EVIDENCE PRESENTED, YOU HAVE A GROUP OF

03:06PM 24 PEOPLE THAT WORKED WITH HOUSE, SALAZAR AND BOBBY JAMES AT ONE

03:06PM 25 PARTICULAR TIME, AND THEY WERE BEING SUPPLIED BY MR. CAMACHO.

03:06PM 1 THEN I THINK THE ARGUMENT COULD ALSO BE MADE THAT ONCE KENNETH  
03:07PM 2 HOUSE AND MR. SALAZAR ARE ARRESTED, THEY'RE NO LONGER A PART  
03:07PM 3 OF THE CONSPIRACY, AND THAT CONSPIRACY ENDED AND THAT AGREEMENT  
03:07PM 4 ENDED.

03:07PM 5 BECAUSE THEN YOU HAD TESTIMONY THAT MR. JAMES,  
03:07PM 6 MELISSA STEWART AND TREY TIBBS THEN STARTED DEALING WITH  
03:07PM 7 MR. CAMACHO DIRECTLY. SO THAT, THEN, IS ANOTHER AGREEMENT,  
03:07PM 8 ANOTHER GROUP OF PEOPLE WORKING SEPARATELY FROM THE OVERALL  
03:07PM 9 INITIAL GROUP, BECAUSE IT'S STARTING TO FALL APART.

03:07PM 10 THEN YOU HAVE MS. HOUSE AND MS. BOWEN, WHO TESTIFIED  
03:07PM 11 THAT ONCE HER HUSBAND WENT TO JAIL, SHE STARTED DOING HER OWN  
03:07PM 12 THING AND DIDN'T TELL HER HUSBAND ABOUT IT. SO THERE'S NOT  
03:07PM 13 ANY KNOWLEDGE IMPUTED TO THEM, MR. HOUSE OR MR. SALAZAR, DURING  
03:07PM 14 THAT PERIOD OF TIME.

03:07PM 15 THEN YOU ALSO HAVE--WHEN IT RELATES TO MR. BOWEN,  
03:07PM 16 HE COMES ON THE SCENE IN JUNE OR JULY OR JULY OR AUGUST AND  
03:07PM 17 HE'S TALKING TO KISHA ABOUT, "HEY, I NEED," SUPPOSEDLY, "A NEW  
03:08PM 18 SOURCE." SO HE GETS INTRODUCED TO MR. PERALES. BUT THAT'S A  
03:08PM 19 WHOLE DIFFERENT AGREEMENT.

03:08PM 20 SO I THINK THE EVIDENCE CAN SUPPORT THE ARGUMENT  
03:08PM 21 THAT THESE WERE SEPARATE INDIVIDUAL AGREEMENTS OR GROUPS OF  
03:08PM 22 PEOPLE. YEAH, OVERALL, THE DRUG WAS THE SAME. BUT THEN TO  
03:08PM 23 SAY THAT THEY'RE ALL WORKING TOGETHER UNDER THAT GUISE, I  
03:08PM 24 DON'T THINK THE EVIDENCE SUPPORTS THAT. SO I THINK THE  
03:08PM 25 MULTIPLE-CONSPIRACY CHARGE IS APPROPRIATE.

03:08PM 1 AND I DO--AND, ALSO I THINK, AS FAR AS THE FIFTH  
03:08PM 2 CIRCUIT IS CONCERNED, THAT A DEFENDANT IS ENTITLED TO AN  
03:08PM 3 INSTRUCTION ON A RECOGNIZED DEFENSE FOR WHICH THERE RESTS  
03:08PM 4 EVIDENCE SUFFICIENT FOR A REASONABLE JURY TO FIND IN ITS FAVOR.  
03:08PM 5 AND THAT'S THE U.S. VERSUS MATA, IRONICALLY, 491 F.3D 237,  
03:08PM 6 CITING U.S. VERSUS MASERATI, 1 F.3D 330. SO I THINK THE  
03:08PM 7 EVIDENCE DOES SUPPORT A REASONABLE JURY TO FIND THAT. AND SO  
03:09PM 8 WE DO THINK THE CHARGE IS APPROPRIATE--OR THE INSTRUCTION IS  
03:09PM 9 APPROPRIATE.

03:09PM 10 THE COURT: OKAY.

03:09PM 11 WHAT ELSE?

03:09PM 12 MR. WHALEN: AND THE ONLY OTHER REQUEST THAT I  
03:09PM 13 WOULD MAKE--AND I PREFACE THE REQUEST WITH THE KNOWLEDGE  
03:09PM 14 AND UNDERSTANDING THAT IN U.S. VERSUS MATA, 491 F.3D 237, THE  
03:09PM 15 FIFTH CIRCUIT HAS SAID THIS INSTRUCTION IS NO LONGER NECESSARY  
03:09PM 16 BECAUSE THE CONSPIRACY INSTRUCTION--PATTERN INSTRUCTION COVERS  
03:09PM 17 IT. BUT WE WOULD REQUEST THAT THE COURT INCLUDE IN THE  
03:09PM 18 CONSPIRACY SECTION THAT IF YOU FIND THAT MR. BOWEN WAS ONLY  
03:09PM 19 INVOLVED IN A BUYER-SELLER RELATIONSHIP, THEN HE CANNOT  
03:09PM 20 BE FOUND GUILTY OF CONSPIRACY. AND WE WOULD REQUEST THAT  
03:10PM 21 INSTRUCTION, BUT RECOGNIZE THE FIFTH CIRCUIT HAS--

03:10PM 22 THE COURT: DID YOU PUT THAT--

03:10PM 23 MR. WHALEN: I DID NOT. I FOUND THIS LATE. BUT  
03:10PM 24 I ONLY BRING IT UP BECAUSE I'M GOING TO MAKE THE REQUEST, BUT  
03:10PM 25 RECOGNIZE THE FIFTH CIRCUIT HAS SAID IT'S NOT NECESSARY TO GIVE

03:10PM 1 IT.

03:10PM 2 THE COURT: OKAY.

03:10PM 3 MR. WHALEN: SO...

03:10PM 4 THE COURT: AND YOU ARE ASKING ME TO SAY "IF YOU

03:10PM 5 FIND" WHAT?

03:10PM 6 MR. WHALEN: THAT MR. BOWEN WAS ONLY INVOLVED IN A

03:10PM 7 BUYER-SELLER RELATIONSHIP, THEN HE CANNOT BE FOUND GUILTY OF

03:10PM 8 CONSPIRACY.

03:11PM 9 THE COURT: AND WHAT'S THE CASE CITE FROM THE FIFTH

03:11PM 10 CIRCUIT?

03:11PM 11 MR. WHALEN: 491 F.3D 237, U.S. VERSUS MATA. AND

03:11PM 12 IT'S IN--

03:11PM 13 THE COURT: 237? NOT 297?

03:11PM 14 MR. WHALEN: 237. I'M SORRY.

03:11PM 15 THE COURT: OKAY. STILL THE MATA CASE?

03:11PM 16 MR. WHALEN: STILL THE MATA CASE. AND IT'S HEADNOTE

03:11PM 17 NUMBER 7.

03:11PM 18 THE COURT: OKAY.

03:11PM 19 MR. WHALEN: AND THAT'S ALL I HAVE AS FAR AS THE

03:11PM 20 CHARGE GOES, YOUR HONOR.

03:11PM 21 THE COURT: OKAY. THANK YOU.

03:11PM 22 MR. KEMP?

03:11PM 23 MR. KEMP: NOTHING FURTHER FROM ME, YOUR HONOR.

03:11PM 24 THE COURT: OKAY.

03:11PM 25 MR. PETRAZIO: I THINK THE CHARGE IS FINE AS IT'S

03:11PM 1 WRITTEN.

03:11PM 2 THE COURT: OKAY. THANK YOU.

03:11PM 3 LET ME GO LOOK AT THESE CASES YOU'VE GIVEN ME.

03:12PM 4 WHAT WAS THE CASE YOU CITED, MR. GONZALEZ, ON  
03:12PM 5 MULTIPLE CONSPIRACIES?

03:12PM 6 MR. GONZALEZ: I HAVE SEVERAL, YOUR HONOR. IF I  
03:12PM 7 COULD, THE FIFTH CIRCUIT CASE IS UNITED STATES VERSUS WILSON,  
03:12PM 8 116 F.3D 1066, SPECIFICALLY 1075 AND 1076.

03:12PM 9 ALSO, UNITED STATES VERSUS SHORTER, S-H-O-R-T-E-R,  
03:12PM 10 AND THAT IS A SEVENTH CIRCUIT CASE. AND THAT'S 54 F.3D 1248,  
03:12PM 11 SPECIFICALLY 1255. I'M SORRY. 1254 AND 1255.

03:12PM 12 AND THEN UNITED STATES VERSUS MALDONADO-RIVERA, AND  
03:13PM 13 THAT'S AT 922 F.2D 934. AND THAT'S A SECOND CIRCUIT CASE, YOUR  
03:13PM 14 HONOR, BUT BASICALLY SPEAKING OF THE THREE SPECIFIC FACTORS  
03:13PM 15 THAT THE COURT SHOULD LOOK AT TO DETERMINE WHETHER IT'S A  
03:13PM 16 SINGLE CONSPIRACY OR MULTIPLE CONSPIRACIES. THOSE CIRCUITS  
03:13PM 17 HAVE LOOKED AT THAT.

03:13PM 18 THE COURT: OKAY.

03:13PM 19 MR. GONZALEZ: THANK YOU.

03:13PM 20 AND IN REGARDS TO THE OTHER INSTRUCTION, YOUR HONOR,  
03:13PM 21 OBVIOUSLY DEFENSE COUNSEL HAS ACKNOWLEDGED THAT THE FIFTH  
03:13PM 22 CIRCUIT HAS INDICATED THAT IT'S NOT NECESSARY. OBVIOUSLY,  
03:13PM 23 WE WOULD ARGUE THAT IT'S NOT NECESSARY AND THAT IT SHOULDN'T  
03:13PM 24 BE INCLUDED BECAUSE THIS IS A CONSPIRACY AND AN END-USER  
03:13PM 25 DEFINITION WOULD NOT BE NECESSARY.

03:13PM 1 THE COURT: OKAY.

03:13PM 2 MR. WHALEN: WHAT IS THE CITE FOR THAT WILSON CASE,

03:13PM 3 AGAIN?

03:13PM 4 MR. GONZALEZ: 116 F.3D 1066.

03:14PM 5 MR. WHALEN: 160?

03:14PM 6 MR. GONZALEZ: 116.

03:14PM 7 MS. BATSON: YOUR HONOR, AS FAR AS THE BUYER-SELLER

03:14PM 8 INSTRUCTION, IN A CASE BEFORE THIS COURT, UNITED STATES VERSUS

03:14PM 9 KEYON MITCHELL--UNFORTUNATELY, I DO NOT HAVE THE CITE, BUT YOU

03:14PM 10 WERE THE JUDGE ON THAT--SINCE COUNSEL DID RAISE THE BUYER-

03:14PM 11 SELLER ARGUMENT BEFORE THIS COURT, WHAT YOU RULED BACK THEN WAS

03:14PM 12 THAT ONCE YOU MADE A DETERMINATION THAT A CONSPIRACY EXISTED,

03:14PM 13 THERE COULD NOT BE A SIMPLE BUYER-SELLER RELATIONSHIP BECAUSE

03:14PM 14 OF THE AGREEMENTS THAT WERE MADE.

03:14PM 15 THE COURT: IN OTHER WORDS, ON THE RULE 29 MOTIONS?

03:14PM 16 MS. BATSON: YES, YES. AND YOU DID NOT GIVE THE

03:14PM 17 INSTRUCTION.

03:14PM 18 THE COURT: OKAY.

03:15PM 19 WELL, I NEED TO GO LOOK AT THESE CASES. I DON'T

03:15PM 20 KNOW IF YOU WANT TO WAIT OR JUST COME BACK TOMORROW MORNING,

03:15PM 21 OR WHAT YOU WOULD LIKE TO DO.

03:15PM 22 MS. BATSON: WE'LL WAIT, YOUR HONOR.

03:15PM 23 MR. PETRAZIO: WE'LL WAIT.

03:15PM 24 THE COURT: YOU WANT TO WAIT? OKAY. ALL RIGHT.

03:15PM 25 AND THEN AFTER I LOOK AT THESE CASES WE'LL TALK ABOUT TIME

03:15PM 1 FOR FINAL ARGUMENTS.

03:15PM 2 LET ME GO BACK THERE.

03:16PM 3 [RECESS]

04:46PM 4 [OPEN COURT, NEITHER THE DEFENDANTS NOR THE JURY ARE  
04:46PM 5 PRESENT]

04:46PM 6 THE COURT: I'VE LOOKED AT A LOT OF CASES. MOST  
04:46PM 7 OF THEM ARE FIFTH CIRCUIT CASES, BUT ALSO FROM TWO OF THE OTHER  
04:47PM 8 CIRCUITS. I LOOKED AT THE CASES THAT MR. GONZALEZ CITED, AND  
04:47PM 9 I LOOKED AT A COUPLE OF OTHERS, MAYBE THREE OTHERS.

04:47PM 10 FIRST OF ALL, ON THE BUYER-SELLER ISSUE, I DID LOOK  
04:47PM 11 AT THE MASERATI CASE AND THE MATA CASE, BOTH FIFTH CIRCUIT  
04:47PM 12 CASES THAT HOLD THAT WHILE IT IS TRUE THAT A BUYER-SELLER  
04:47PM 13 RELATIONSHIP WITHOUT MORE WILL NOT PROVE A CONSPIRACY, THE  
04:48PM 14 FIFTH CIRCUIT HAS HELD THAT THE PATTERN JURY INSTRUCTION UNDER  
04:48PM 15 2.89 ADEQUATELY COVERS INSTRUCTION ON DRUG CONSPIRACIES. AND  
04:48PM 16 THAT INSTRUCTION COVERS THE PROPOSED BUYER-SELLER ISSUE. THAT  
04:49PM 17 COMES ALSO FROM THE FIFTH CIRCUIT'S CLARK CASE, WHICH IS A  
04:49PM 18 2008 CASE, WHICH IS MORE RECENT THAN EITHER MASERATI OR MATA.  
04:49PM 19 AND SO THE FIFTH CIRCUIT HAS HELD THAT THERE'S NO ERROR IN  
04:49PM 20 REFUSING TO GIVE A SEPARATE INSTRUCTION ON BUYER-SELLER.

04:49PM 21 SO, MR. WHALEN, I'M NOT GOING TO GIVE ANOTHER  
04:49PM 22 INSTRUCTION ON BUYER-SELLER.

04:49PM 23 MR. WHALEN: I UNDERSTAND, YOUR HONOR. I RECOGNIZE  
04:49PM 24 THE FIFTH CIRCUIT PRECEDENT.

04:49PM 25 THE COURT: OKAY.

04:51PM 1 ON THE MULTIPLE-CONSPIRACIES ISSUE, I LOOKED AT A  
04:51PM 2 COUPLE OF CASES OTHER THAN THE ONES THAT MR. GONZALEZ CITED.  
04:51PM 3 THE FIRST ONE WAS UNITED STATES VERSUS ERWIN, CITED  
04:51PM 4 AT 793 F.2D 656. IN THAT CASE, THE DEFENDANT REQUESTED THE  
04:51PM 5 COURT GIVE AN INSTRUCTION ON MULTIPLE CONSPIRACIES. THE COURT  
04:52PM 6 REFUSED. THE FIFTH CIRCUIT SAID THAT WHETHER THE EVIDENCE  
04:52PM 7 SHOWS ONE OR MULTIPLE CONSPIRACIES IS A FACT QUESTION FOR THE  
04:52PM 8 JURY. OF COURSE, THE EVIDENCE MUST ARGUABLY RAISE A QUESTION  
04:52PM 9 OF MULTIPLE CONSPIRACIES IN ORDER FOR THE DEFENDANT TO BE  
04:52PM 10 ENTITLED TO AN INSTRUCTION ON THAT THEORY. THE FIFTH CIRCUIT  
04:52PM 11 SAID IT'S ERROR TO REFUSE A REQUEST TO INSTRUCT ON MULTIPLE  
04:52PM 12 CONSPIRACIES IF THAT THEORY HAS ANY EVIDENTIARY SUPPORT  
04:52PM 13 WHATSOEVER. THE FIFTH CIRCUIT THEN LISTED FIVE CONSIDERATIONS.  
04:52PM 14 THEY HAVE TO DO WITH TIME FRAME, LOCATIONS OF THE EVENTS  
04:52PM 15 INVOLVED IN THE CONSPIRACY, PERSONS ACTING AS COCONSPIRATORS,  
04:53PM 16 THE STATUTORY OFFENSES CHARGED IN THE INDICTMENT--OF COURSE,  
04:53PM 17 HERE WE ONLY HAVE THE CONSPIRACY CHARGE--AND ANY OTHER  
04:53PM 18 DESCRIPTION OF THE OFFENSE. SO...  
04:53PM 19 THE TIME FRAME HERE IS ALMOST FOUR AND A HALF YEARS,  
04:53PM 20 AS ALLEGED IN THE INDICTMENT. SO THERE'S A BROAD TIME FRAME.  
04:53PM 21 THE LOCATIONS? WELL, IT'S PRETTY MUCH IN THE DALLAS  
04:53PM 22 AREA, AS WELL AS IN COLLIN AND GRAYSON COUNTIES. I DON'T  
04:54PM 23 REMEMBER IF THERE'S ANYTHING IN DENTON COUNTY. THERE MAY HAVE  
04:54PM 24 BEEN SOME OF IT IN TARRANT COUNTY, BECAUSE THERE WAS A HOUSE  
04:54PM 25 IN GRAND PRAIRIE. SO IT'S IN THE DALLAS-FORT WORTH AREA AND

04:54PM 1 NORTH.

04:54PM 2 PERSONS ACTING AS COCONSPIRATORS. THERE'S 34 OF  
04:54PM 3 THEM ACCUSED. ALL HAVE PLED GUILTY EXCEPT FOR THESE THREE.  
04:54PM 4 SO PRESUMABLY THE OTHER 31 CONSPIRED. THEY'VE ADMITTED IT.  
04:54PM 5 I'M NOT SURE HOW THAT HELPS THE COURT ANALYZE WHETHER TO GIVE  
04:54PM 6 THE INSTRUCTION, THOUGH.

04:54PM 7 THERE ARE NO OTHER OFFENSES CHARGED IN THE INDICTMENT  
04:55PM 8 OTHER THAN CONSPIRACY.

04:55PM 9 DESCRIPTION OF THE OFFENSE. THAT'S THE FIFTH FACTOR  
04:55PM 10 IN THE ERWIN CASE. HERE WE HAVE EVIDENCE THAT JUAN CARLOS VEGA  
04:55PM 11 KNEW RAMIRO CAZARES AND WHERE CAZARES GOT HIS DRUGS, WHICH WAS  
04:55PM 12 FROM PRIMO. VEGA SAID HE WAS A RUNNER FOR CAZARES. HE HAD A  
04:55PM 13 CAR THAT HAD HIDDEN TRAPS. AND THEN CAZARES SAYS HE KNOWS VEGA.  
04:56PM 14 HE CALLED VEGA TO PICK UP DRUGS AND HE COOKED METH WITH VEGA.  
04:56PM 15 AND THEN THERE WAS THE RECORDED PHONE CALL WHERE THEY TALKED  
04:56PM 16 ABOUT COOKING METH.

04:56PM 17 OKAY. WITH RESPECT TO TIMOTHY BOWEN, WHO HAS  
04:56PM 18 REQUESTED THIS CHARGE, FERNANDO PERALES, THE OTHER SUPPLIER  
04:57PM 19 BESIDES ANDY NGUYEN, TESTIFIED THAT HE SOLD TO BOWEN. TREY  
04:57PM 20 TIBBS WAS WITH BOWEN. BOWEN AND TIBBS PICKED UP DRUGS TOGETHER.  
04:57PM 21 THERE'S EVIDENCE OF A RELATIONSHIP AMONG BOWEN, TIBBS AND  
04:57PM 22 PERALES, THE SUPPLIER. DOGG WAS HIS NICKNAME. AND THERE'S  
04:57PM 23 EVIDENCE OF A RELATIONSHIP BETWEEN HOUSE AND HIS PARTNER,  
04:58PM 24 SALAZAR, AND BOWEN. SALAZAR TOLD HOUSE HE WAS SELLING TO  
04:58PM 25 BOWEN. BOWEN AND TIBBS POOLED THEIR MONEY TO BUY DRUGS.

04:58PM 1 AND MARIE DAVILA GOT DRUGS FROM BOWEN. SO THERE ARE SEVERAL  
04:58PM 2 OTHER ALLEGED COCONSPIRATORS, SOME OF WHICH--MANY OF WHICH  
04:58PM 3 HAVE PLED GUILTY, WHO TESTIFIED ABOUT THEIR RELATIONSHIP  
04:58PM 4 WITH BOWEN; GETTING DRUGS FROM HIM, SELLING DRUGS TO HIM AND  
04:59PM 5 BOWEN DISTRIBUTING DRUGS. AND A LOT OF THESE WITNESSES WERE  
04:59PM 6 DISTRIBUTORS. SOME WERE SELLERS, SOME WERE DISTRIBUTORS,  
04:59PM 7 BUT THEY WERE ALL INVOLVED IN THE SCHEME TO DISTRIBUTE  
04:59PM 8 METHAMPHETAMINE.

04:59PM 9 AND THEN THERE ARE UNINDICTED PERSONS WHO WERE DOING  
04:59PM 10 BUSINESS WITH BOWEN, SUCH AS CARLOS CABRALES AND MARIE DAVILA  
04:59PM 11 AND KISHA BOWEN.

05:00PM 12 SO THE FIFTH CIRCUIT SAID IN THAT FIRST CASE, THE  
05:00PM 13 ERWIN CASE, THAT BASICALLY BECAUSE THERE WERE--EVEN THOUGH--  
05:00PM 14 LET'S SEE. EVEN THOUGH THERE WERE TWO GROUPS OPERATING IN THE  
05:00PM 15 SAME TIME PERIOD IN CLOSE PROXIMITY TO EACH OTHER, COOPERATING  
05:00PM 16 WITH EACH OTHER, THEIR TECHNIQUES OF DISTRIBUTION WERE IDENTICAL.  
05:00PM 17 THERE WAS NO EVIDENCE OF INTERGROUP COMPETITION. THEY SUPPLIED  
05:00PM 18 EACH OTHER. THE COURT SAID, "WHILE THE LATTER EVIDENCE WOULD  
05:00PM 19 WARRANT OUR AFFIRMING A JURY FINDING OF A SINGLE CONSPIRACY,  
05:01PM 20 IT'S NOT SO OVERWHELMING THAT THE COURT COULD DECIDE THE  
05:01PM 21 QUESTION AS A MATTER OF LAW." AND THE COURT CONCLUDED THAT THE  
05:01PM 22 DEFENDANT WAS ENTITLED TO A MULTIPLE-CONSPIRACY INSTRUCTION.  
05:01PM 23 SO THERE'S THAT CASE THAT WOULD SEEM TO FAVOR GRANTING THE  
05:01PM 24 INSTRUCTION, I GUESS.

05:01PM 25 THEN THERE'S THE '91 CASE OF U.S. VERSUS ELLENDER,

05:01PM 1 947 F.2D 748. THAT WASN'T A REQUEST FOR A JURY INSTRUCTION.  
05:01PM 2 IT WAS AN ARGUMENT THAT THE EVIDENCE DIDN'T SUPPORT THE JURY'S  
05:01PM 3 FINDING. AGAIN THEY LOOKED AT THE FIVE FACTORS THAT WERE IN  
05:02PM 4 ERWIN, WHICH DIFFER FROM THE THREE FACTORS THAT MR. GONZALEZ  
05:02PM 5 TALKED ABOUT THAT ARE IN OTHER CASES. THE FIVE FACTORS BEING  
05:02PM 6 TIME FRAME, LOCATION OF THE EVENTS CHARGED AS PART OF THE  
05:02PM 7 CONSPIRACY, THE PERSONS ACTING AS COCONSPIRATORS, THE STATUTORY  
05:02PM 8 OFFENSES CHARGED IN THE INDICTMENT, AND THE OVERT ACTS OR OTHER  
05:02PM 9 DESCRIPTION OF THE OFFENSE. AND THE COURT SIMPLY FOUND THAT  
05:02PM 10 THE EVIDENCE WAS SUFFICIENT FOR A RATIONAL JURY TO CONCLUDE  
05:02PM 11 THAT THE GOVERNMENT HAD ESTABLISHED THE ELEMENTS OF A SINGLE  
05:03PM 12 CONSPIRACY. AGAIN, THAT'S NOT A REQUEST FOR A JURY INSTRUCTION;  
05:03PM 13 THAT'S A CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE AT THE  
05:03PM 14 CONCLUSION OF THE CASE, IS THE WAY I READ THAT CASE.

05:03PM 15 BUT BOTH ERWIN AND ELLENDER HAVE A FIVE-FACTOR TEST.  
05:03PM 16 THEN I GOT TO ANOTHER CASE, STOWELL, U.S. VERSUS  
05:03PM 17 STOWELL, 947 F.2D 1251. THAT'S THE THIRD CASE THAT I SIMPLY  
05:03PM 18 LOOKED AT ON MY OWN THAT WE DIDN'T DISCUSS EARLIER OUT HERE IN  
05:03PM 19 THE COURTROOM. THAT'S ALSO A FIFTH CIRCUIT CASE. THE QUESTION  
05:04PM 20 IS WHETHER THERE'S ANY EVIDENCE TO SUPPORT THE ISSUANCE OF THE  
05:04PM 21 MULTIPLE CONSPIRACIES CHARGED. AND IN THAT CASE, THERE WAS A  
05:04PM 22 REQUEST FOR THE INSTRUCTION. APPARENTLY, THE CASE AGENT  
05:04PM 23 TESTIFIED THAT THE ROLE OF ONE OF THE DEFENDANTS WAS AS A  
05:04PM 24 SUPPLIER. THE DEFENDANT WAS JIMMY WOOD. HE WAS A SUPPLIER  
05:04PM 25 OF MARIJUANA. HE DIDN'T PARTICIPATE IN ANY LOADING OR

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05:04PM 1 TRANSPORTATION ACTIVITIES. THE COURT SAID, "THUS THERE WAS  
05:04PM 2 SOME EVIDENCE TENDING TO SHOW THAT WOOD PARTICIPATED ONLY IN  
05:04PM 3 A CONSPIRACY TO IMPORT AND NOT A CONSPIRACY TO POSSESS WITH  
05:04PM 4 INTENT TO DISTRIBUTE. THEREFORE, IT WAS ERROR FOR THE COURT  
05:05PM 5 TO REFUSE TO INSTRUCT ON MULTIPLE CONSPIRACIES."

05:05PM 6 HERE, WE HAVE BOWEN BUYING--EVIDENCE OF HIM BUYING  
05:05PM 7 AND SELLING. I GUESS HE'S BOTH A SUPPLIER AND A DISTRIBUTOR.  
05:05PM 8 WAS HE SELLING ONLY TO END USERS? DO Y'ALL REMEMBER? OR  
05:05PM 9 WAS HE SELLING QUANTITIES THAT OTHERS WOULD REDISTRIBUTE?

05:05PM 10 MR. WHALEN: YOUR HONOR, I DON'T THINK THERE'S  
05:05PM 11 ANY TESTIMONY IN THE RECORD CONCERNING WHAT HE DID WITH ANY  
05:06PM 12 SUPPOSED METHAMPHETAMINE.

05:06PM 13 THE COURT: DO YOU RECALL?

05:06PM 14 MS. BATSON: YOUR HONOR, I BELIEVE IT WAS MS. DAVILA  
05:06PM 15 WHO TESTIFIED THAT AFTER SHE AND DEFENDANT BOWEN RETURNED FROM  
05:06PM 16 OBTAINING THE METHAMPHETAMINE, THAT THEY WOULD REWEIGH IT AND  
05:06PM 17 REPACKAGE IT AND THEN THEY WOULD CALL THE CUSTOMERS AND THEY  
05:06PM 18 WOULD COME OVER. AND THEN IF THERE WAS ANY OTHER--I THINK THIS  
05:06PM 19 WAS MS. DAVILA--IF THERE WAS ANY OTHER METHAMPHETAMINE LEFT,  
05:06PM 20 THEN TIM BOWEN WOULD REDISTRIBUTE IT AND FILL THE ORDERS WHEN  
05:06PM 21 THE PEOPLE CALLED.

05:06PM 22 BUT THEN SHE ALSO TESTIFIED THAT WHEN --ACTUALLY, I  
05:06PM 23 THINK IT WAS MR. CABRALES. HE TESTIFIED THAT MARIE DAVILA AND  
05:06PM 24 TIM BOWEN GAVE HIM SOME METHAMPHETAMINE FOR THE USE OF HIS CAR.

05:07PM 25 THE COURT: YEAH.

05:07PM 1 MS. BATSON: SO IN THAT CASE MS. DAVILA WOULD  
05:07PM 2 REDISTRIBUTE. NOT FOR PROFIT, BUT DISTRIBUTION IS SHARING,  
05:07PM 3 JUST GIVING IT TO ANOTHER PERSON.

05:07PM 4 THE COURT: BOWEN IS BUYING METHAMPHETAMINE, HE'S  
05:07PM 5 COMPLAINING ABOUT THE PRICE THAT DOGG IS CHARGING HIM--FERNANDO  
05:07PM 6 PERALES--AND TRYING TO GET A BETTER PRICE.

05:07PM 7 MS. BATSON: YOUR HONOR, IF WE CAN BACK UP FROM  
05:07PM 8 THAT, WE KNOW THAT HE WAS GETTING FROM DEFENDANT SALAZAR.

05:07PM 9 THE COURT: YES.

05:07PM 10 MS. BATSON: AND THEN WHEN SALAZAR WENT TO JAIL,  
05:07PM 11 HE NEEDED TO FIND ANOTHER SOURCE OF SUPPLY, AND THEN, YES,  
05:07PM 12 HE STARTED GOING TO DOGG.

05:07PM 13 THE COURT: WELL, IN THIS STOWELL CASE, THE FIFTH  
05:07PM 14 CIRCUIT SEPARATED CONSPIRACY TO IMPORT FROM CONSPIRACY TO  
05:07PM 15 POSSESS WITH INTENT TO DISTRIBUTE. I GUESS YOU WOULD HAVE  
05:08PM 16 HAD TO KNOW MORE DETAILS ABOUT THE CASE. IT LOOKS LIKE  
05:08PM 17 THERE'S--WELL, I DON'T KNOW. THEY JUST SAID THERE WAS SOME  
05:08PM 18 EVIDENCE THAT HE PARTICIPATED ONLY IN A CONSPIRACY TO IMPORT  
05:08PM 19 AND NOT TO POSSESS WITH INTENT TO DISTRIBUTE. THE CHARGE IN  
05:08PM 20 THE CASE WAS CONSPIRING TO POSSESS WITH INTENT TO DISTRIBUTE.  
05:08PM 21 SO APPARENTLY THE DEFENDANT IN THE STOWELL CASE WASN'T A  
05:08PM 22 DISTRIBUTOR. OF COURSE, IF YOU SUPPLY MARIJUANA TO OTHERS,  
05:08PM 23 AREN'T YOU DISTRIBUTING? I DON'T KNOW. I CAN'T EXPLAIN IT.

05:09PM 24 OKAY. THEN I WENT TO THE CASES THAT MR. GONZALEZ  
05:09PM 25 CITED. OKAY. THE WILSON CASE. LET'S SEE. I THINK THE WILSON

05:09PM 1 CASE WAS A RULE 29 MOTION. I DON'T THINK IT WAS A REQUEST TO  
05:09PM 2 INCLUDE THE INSTRUCTION IN THE JURY INSTRUCTIONS, THE MULTIPLE-  
05:09PM 3 CONSPIRACY INSTRUCTION, BECAUSE AT HEADNOTE 8, THE FIFTH  
05:09PM 4 CIRCUIT WRITES, "NEXT, THE DEFENDANTS ARGUE THAT THERE IS A  
05:09PM 5 PREJUDICIAL VARIANCE BETWEEN THE INDICTMENT, WHICH CHARGES A  
05:09PM 6 SINGLE CONSPIRACY, AND THE PROOF AT TRIAL," WHICH THEY SUGGEST  
05:09PM 7 TENDS TO SHOW THE EXISTENCE OF MULTIPLE CONSPIRACIES. OKAY.

05:10PM 8 THEN WE GET TO THE THREE-FACTOR TEST. AND WILSON IS  
05:10PM 9 A 1997 CASE. IT CAME AFTER ERWIN, ELLENDER AND STOWELL. AND  
05:10PM 10 THERE'S THIS THREE-FACTOR TEST: EXISTENCE OF A COMMON GOAL,  
05:10PM 11 NATURE OF THE SCHEME, OVERLAPPING OF PARTICIPANTS. THE COURT  
05:10PM 12 SAID, "THE GOAL OF SELLING COCAINE FOR PROFIT SATISFIES THE  
05:10PM 13 COMMON-GOAL REQUIREMENT." SO BY THAT TEST--UNDER THAT FACTOR,  
05:10PM 14 ALL OF THESE PEOPLE WERE--WELL, MANY OF THESE PEOPLE WERE  
05:10PM 15 SELLING COCAINE OR DISTRIBUTING COCAINE FOR PROFIT. SOME OF  
05:10PM 16 THEM WERE USERS, LIKE DAVILA. I DON'T KNOW WHO ELSE. MELISSA  
05:11PM 17 STEWART MAYBE. OH, I'M SORRY. DID I SAY "COCAINE"?

05:11PM 18 MS. BATSON: YES, SIR.

05:11PM 19 THE COURT: WELL, LET'S SEE. WHAT KIND OF CASE WAS  
05:11PM 20 THIS? OKAY. YEAH. WELL, I WAS READING FROM THIS WILSON CASE.  
05:11PM 21 "THE GOAL OF SELLING COCAINE FOR PROFIT SATISFIES THE COMMON  
05:11PM 22 GOAL." LIKEWISE, THE GOAL OF SELLING METHAMPHETAMINE FOR  
05:11PM 23 PROFIT SATISFIES THE COMMON GOAL.

05:11PM 24 DID YOU WANT TO SAY SOMETHING?

05:11PM 25 MR. WHALEN: JUDGE, AS FAR AS THE WILSON CASE GOES,

05:11PM 1 IT'S DISTINGUISHABLE IN THE SENSE THAT THE PARTICIPANTS IN THAT  
05:11PM 2 WERE PART OF A CRIMINAL STREET GANG. I THINK THEY WERE, YOU  
05:11PM 3 KNOW, EITHER SOME TYPE OF GANG WHERE THEY'RE ALL AFFILIATED  
05:11PM 4 WITH EACH OTHER THROUGH THIS COMMON BOND OF BEING IN A GANG.  
05:12PM 5 I THINK IT IS A LITTLE BIT DIFFERENT.

05:12PM 6 AND THEN I WOULD SAY, AS FAR AS THE FIVE-FACTOR  
05:12PM 7 TEST, IT'S STILL THE ANALYSIS THAT I THINK THE FIFTH CIRCUIT  
05:12PM 8 IS USING, BECAUSE IN THE CASE UNITED STATES VERSUS DUFFY, WHERE  
05:12PM 9 I ARGUED IT, WE USED THAT FIVE-FACTOR--THEY CONSIDERED THE  
05:12PM 10 FIVE-FACTOR TEST BECAUSE OUR ARGUMENT AT TRIAL WAS THAT THEY  
05:12PM 11 PROVED A BANK-ROBBERY CASE WHEN THEY ROBBED MULTIPLE BANKS,  
05:12PM 12 CHARGED THEM SEPARATELY, AND WE ARGUED THAT THEY WERE A SINGLE  
05:12PM 13 CONSPIRACY, AND THEY USED THE FIVE-FACTOR TEST AND FOUND THAT  
05:12PM 14 EACH BANK ROBBERY WAS A SEPARATE OFFENSE. SO THE FIVE-FACTOR  
05:12PM 15 TEST IS STILL BEING UTILIZED BY THE FIFTH CIRCUIT.

05:12PM 16 THE COURT: DO YOU HAVE AN ARGUMENT AS TO WHEN YOU  
05:12PM 17 USE THE FIVE-FACTOR TEST AND WHEN YOU USE THE THREE-FACTOR  
05:12PM 18 TEST? DO YOU KNOW?

05:12PM 19 MR. WHALEN: IN ALL MY RESEARCH, I DIDN'T KNOW THAT  
05:12PM 20 THEY EVEN HAD A THREE-FACTOR TEST. BECAUSE IN OUR PARTICULAR  
05:13PM 21 CASE WE SAW THE FIVE-FACTOR TEST AND NOBODY EVER MENTIONED  
05:13PM 22 THERE WAS A THREE-FACTOR TEST IN THE FIFTH CIRCUIT WHEN WE  
05:13PM 23 ARGUED. SO...

05:13PM 24 THE COURT: OKAY. WELL, THE FIVE-FACTOR TEST  
05:13PM 25 WAS USED IN ERWIN, AND THAT WAS BASED UPON A REQUEST BY

05:13PM 1 THE DEFENDANT TO INCLUDE MULTIPLE CONSPIRACIES IN THE JURY  
05:13PM 2 INSTRUCTIONS. IT WASN'T A RULE 29-MOTION-TYPE ARGUMENT, IT  
05:13PM 3 WASN'T AN ARGUMENT AFTER THE JURY'S VERDICT CAME IN SAYING IT  
05:13PM 4 WAS INSUFFICIENT EVIDENCE; IT WAS A CHARGE-CONFERENCE-TYPE  
05:13PM 5 ARGUMENT.

05:13PM 6 OKAY. COMMON GOAL. SELLING METHAMPHETAMINE FOR  
05:13PM 7 PROFIT SATISFIES THE COMMON GOAL.

05:13PM 8 NATURE OF THE SCHEME. THE FIFTH CIRCUIT SAID--I'M  
05:13PM 9 BACK ON WILSON--"WITH RESPECT TO THE NATURE OF THE SCHEME,  
05:13PM 10 WE LOOK AT THE DEGREE OF INTERDEPENDENCE OF THE ACTIONS OF  
05:14PM 11 MEMBERS." INTERDEPENDENCE.

05:14PM 12 MS. BATSON OR MR. GONZALEZ, ARE THEY INTERDEPENDENT,  
05:14PM 13 OR ARE THEY ALL WORKING FOR THEIR OWN INTERESTS HERE, SELLING  
05:14PM 14 METHAMPHETAMINE? I MEAN, THEY'RE INTERDEPENDENT IN THE SENSE  
05:14PM 15 THAT SOME ARE SELLING TO OTHERS IN THE CONSPIRACY AND BUYING  
05:14PM 16 FROM OTHERS IN THE CONSPIRACY.

05:14PM 17 MS. BATSON: YOUR HONOR, YES, WE BELIEVE THAT THEY  
05:14PM 18 WERE INTERDEPENDENT. AND ONE OF THE WAYS--

05:14PM 19 THE COURT: WELL--

05:14PM 20 MS. BATSON: GO AHEAD.

05:14PM 21 THE COURT: --ONE OF THE WAYS IS THAT TREY TIBBS AND  
05:14PM 22 MR. BOWEN POOLED THEIR MONEY--

05:14PM 23 MS. BATSON: YES.

05:14PM 24 THE COURT: --TO BUY--

05:14PM 25 MS. BATSON: AND THEY RELIED ON DRIVERS IN ORDER

05:14PM 1 TO GET THEM DOWN TO PURCHASE THE METHAMPHETAMINE FROM DOGG,  
05:15PM 2 BECAUSE THEY DIDN'T HAVE A VEHICLE. SO THEY DID RELY ON ONE  
05:15PM 3 ANOTHER.

05:15PM 4 AND THEN THERE WAS ALSO TESTIMONY, YOUR HONOR, THAT  
05:15PM 5 IF ONE PERSON WAS OUT OF METHAMPHETAMINE, THEY WENT TO ANOTHER  
05:15PM 6 PERSON TO GET THE METHAMPHETAMINE. AND SO THEY WERE DEPENDENT  
05:15PM 7 ON EACH OTHER, AS WELL, TO COVER EACH OTHER'S CUSTOMERS.

05:15PM 8 THE COURT: MR. WHALEN?

05:15PM 9 MR. WHALEN: OBVIOUSLY, I DISAGREE WITH THAT,  
05:15PM 10 BECAUSE I THINK IF YOU LOOK AT THE TESTIMONY, THAT THERE'S SOME  
05:15PM 11 SUGGESTION THAT MR. BOWEN WAS DEALING WITH PERALES PRIOR TO  
05:15PM 12 ENGAGING MR. TIBBS IN NEGOTIATING A LOWER PRICE. AND SO HE  
05:15PM 13 WAS--IF YOU BELIEVE THAT TESTIMONY, THEN HE'S ENGAGING IN HIS  
05:15PM 14 OWN ACTIVITY WITHOUT ANY HELP FROM MR. TIBBS. THERE'S NOTHING  
05:15PM 15 TO SUGGEST HE WOULDN'T HAVE CONTINUED ON HIS OWN IF MR. TIBBS  
05:15PM 16 HADN'T--HE DIDN'T NEED MR. TIBBS TO CONTINUE HIS ACTIVITIES.

05:15PM 17 THE COURT: PERALES?

05:15PM 18 MR. WHALEN: I MEAN MR. BOWEN. SO HE'S NOT  
05:15PM 19 DEPENDENT ON MR. TIBBS.

05:15PM 20 THE COURT: BUT THEY POOLED THEIR MONEY.

05:16PM 21 MR. WHALEN: AT THAT TIME. BUT I THINK PRIOR TO  
05:16PM 22 THAT THEY WEREN'T. SO I THINK IF YOU LOOK AT THE WHOLE  
05:16PM 23 RELATIONSHIP, THEY'RE NOT INTERDEPENDENT ON EACH OTHER BECAUSE  
05:16PM 24 THEN AFTER THEY PURCHASED IT AND SPLIT IT UP, THEY WENT THEIR  
05:16PM 25 SEPARATE WAYS. SO HE WASN'T DEPENDENT ON HIM TO SELL ANY

05:16PM 1 ADDITIONAL PRODUCT OR MAKE ANY PROFIT OFF OF THAT. SO THEY  
05:16PM 2 WERE NOT INTERDEPENDENT ON EACH OTHER. AND I THINK THAT THE  
05:16PM 3 ISSUE BECOMES--I THINK YOU CAN LOOK AT IT FROM TWO DIFFERENT  
05:16PM 4 PERSPECTIVES, IN TWO DIFFERENT WAYS. I THINK THAT THEN LENDS  
05:16PM 5 ITSELF TO THE COURT GIVING THE JURY INSTRUCTION IF THERE'S  
05:16PM 6 ANY WAY YOU CAN VIEW IT. AND I THINK YOU CAN LOOK AT IT TWO  
05:16PM 7 DIFFERENT WAYS AND COME TO TWO DIFFERENT CONCLUSIONS. IT'S  
05:16PM 8 OVERWHELMING TO SAY IT'S JUST A SINGLE CONSPIRACY.

05:16PM 9 THE COURT: WHAT YOU WOULD LIKE TO ARGUE, MR. WHALEN,  
05:16PM 10 IS THAT YOUR CLIENT WAS BASICALLY AN INDEPENDENT CONTRACTOR,  
05:16PM 11 HE WAS JUST GETTING COCAINE, THEN HE WENT OUT AND HAD HIS OWN  
05:17PM 12 BUSINESS?

05:17PM 13 MR. WHALEN: RIGHT.

05:17PM 14 THE COURT: HE WAS A SOLE PROPRIETOR?

05:17PM 15 MR. WHALEN: RIGHT. I THINK THAT'S A REASONABLE  
05:17PM 16 INFERENCE FROM THE EVIDENCE.

05:17PM 17 MS. BATSON: YOUR HONOR, I WOULD ARGUE THAT IN THE  
05:17PM 18 TESTIMONY OF KISHA BOWEN, SHE INTRODUCED TIM BOWEN TO DEFENDANT  
05:17PM 19 SALAZAR. SO SHE MADE THAT INTRODUCTION. SO INTRODUCING THE  
05:17PM 20 PARTICIPANTS IS ANOTHER LEVEL OF INTERDEPENDENCY.

05:17PM 21 THEN, WHEN MR. SALAZAR WENT TO JAIL, IT WAS KISHA  
05:17PM 22 BOWEN AND CHRISTINA HOUSE THAT INTRODUCED TIM BOWEN TO DOGG.  
05:17PM 23 AND SO THEY WERE ALL POOLING THEIR MONEY. THE TESTIMONY WAS  
05:17PM 24 EVEN BEFORE TIM BOWEN MET DOGG THAT THEY WERE GOING BY AND  
05:17PM 25 PICKING UP TIM BOWEN'S MONEY, DRIVING DOWN AND GETTING FROM

05:17PM 1 DOGG. AND BECAUSE KISHA BOWEN WAS TOO PREGNANT TO MAKE THE  
05:17PM 2 DRIVE, THAT'S WHEN THEY DECIDED TO MAKE THE FACE-TO-FACE  
05:17PM 3 INTRODUCTION. SO DEFENDANT BOWEN WAS ALSO POOLING HIS MONEY  
05:17PM 4 WITH KISHA BOWEN AND CHRISTINA HOUSE WELL BEFORE TREY TIBBS.  
05:18PM 5 AND THE USE OF THE DRIVERS WAS ALL THROUGHOUT, BEFORE TREY  
05:18PM 6 TIBBS AND AFTER TREY TIBBS.

05:18PM 7 THE COURT: OKAY. SO THE GOVERNMENT'S POSITION IS  
05:18PM 8 THAT THERE IS EVIDENCE OF INTERDEPENDENCE AMONG BOWEN AND  
05:18PM 9 OTHERS IN THE CHARGED CONSPIRACY. AND I AGREE WITH YOU.

05:18PM 10 MR. WHALEN'S POSITION IS THERE'S ALSO EVIDENCE THAT  
05:18PM 11 MR. BOWEN WAS OPERATING ON HIS OWN, FOR HIS OWN INTERESTS. AND  
05:18PM 12 THAT'S, TO SOME EXTENT, ALWAYS THE CASE IN A CONSPIRACY. EVERY  
05:18PM 13 CONSPIRATOR WANTS TO GET SOMETHING OUT OF IT FOR HIMSELF OR  
05:18PM 14 HERSELF. SO WHERE DO YOU DRAW THE LINE? IT LOOKS LIKE I LOOK  
05:18PM 15 AT THE DEGREE OF INTERDEPENDENCE, OF ACTIONS OF THE MEMBERS.

05:18PM 16 MS. BATSON: WELL, YOUR HONOR, THE TESTIMONY  
05:18PM 17 PRESENTED AT TRIAL SHOWED THAT TIM BOWEN NEVER CULTIVATED HIS  
05:18PM 18 OWN SOURCE OF SUPPLY. HE ALWAYS HAD TO BE INTRODUCED TO A  
05:19PM 19 SOURCE OF SUPPLY BY SOMEONE ELSE WHO WAS ALREADY IN THE  
05:19PM 20 CONSPIRACY. SO TO SAY HE WAS ACTING FOR HIMSELF, I MEAN,  
05:19PM 21 HOW COULD HE ACT FOR HIMSELF?

05:19PM 22 THE COURT: ONCE HE GOT THE SOURCE OF SUPPLY AND HE  
05:19PM 23 GOT HIS TWO OUNCES OR FOUR OUNCES, OR WHATEVER, HE GOES OFF AND  
05:19PM 24 SELLS TO HIS OWN CUSTOMERS.

05:19PM 25 MS. BATSON: YES, HE DOES. BUT THEY ALL DO, YOUR

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05:19PM 1 HONOR. THEY ALL GO OFF AND SELL TO THEIR OWN CUSTOMERS. EACH  
05:19PM 2 ONE OF THEM HAS THEIR OWN CUSTOMER BASE. BUT STILL THEY RELIED  
05:19PM 3 ON EACH OTHER TO ASSIST THEM IN THE DISTRIBUTION OF THAT  
05:19PM 4 METHAMPHETAMINE. THE ACQUIRING OF IT AND THE REDISTRIBUTION.

05:19PM 5 THE COURT: I MEAN, I ASSUME HE SOLD IT.

05:19PM 6 MS. BATSON: MS. DAVILA TESTIFIED--IF YOU LOOK AT  
05:19PM 7 MS. DAVILA'S TESTIMONY, SHE TESTIFIED THAT WHEN THEY REPACKAGED  
05:20PM 8 IT, THEY REPACKAGED IT INTO THREE BAGS OF 7.5, SOMETHING LIKE  
05:20PM 9 THAT, AND THEN THEY HAD CUSTOMERS COME AND PICK IT UP.

05:20PM 10 THE COURT: OKAY. I DIDN'T WRITE THAT DOWN.

05:20PM 11 THE THIRD FACTOR IS THE OVERLAPPING OF THE  
05:20PM 12 PARTICIPANTS IN THE VARIOUS DEALINGS. AND THAT'S ALSO REFERRED  
05:20PM 13 TO AS THE NEXUS AMONG PARTICIPANTS. THE FIFTH CIRCUIT SAYS,  
05:20PM 14 "THERE'S NO REQUIREMENT THAT EVERY MEMBER MUST PARTICIPATE IN  
05:20PM 15 EVERY TRANSACTION TO FIND A SINGLE CONSPIRACY. PARTIES WHO  
05:20PM 16 KNOWINGLY PARTICIPATE WITH CORE CONSPIRATORS MAY BE MEMBERS  
05:20PM 17 OF A SINGLE CONSPIRACY."

05:20PM 18 "CORE CONSPIRATORS" BEING WHOM? ANDY NGUYEN AND  
05:20PM 19 FERNANDO PERALES?

05:20PM 20 MS. BATSON: AND RENE SALAZAR.

05:21PM 21 THE COURT: OKAY. AND KENNETH HOUSE?

05:21PM 22 MS. BATSON: KENNETH HOUSE, YES.

05:21PM 23 THE COURT: WAIT A MINUTE. WHERE IS TIM BOWEN ON  
05:21PM 24 THIS? LET ME SEE HERE. OH, I SEE. OKAY.

05:21PM 25 MS. BATSON: YOUR HONOR, I BELIEVE WE HAVE ANOTHER

05:21PM 1 CHART -- ANOTHER FLOWCHART THAT WE COULD SHOW THE COURT.

05:21PM 2 THAT ONE WAS REALLY A ROUGH DRAFT. SO IF WE COULD--

05:21PM 3 THE COURT: WELL, THE CORE CONSPIRATORS HAVE TO BE

05:21PM 4 THE PEOPLE WHO HAVE THE METHAMPHETAMINE.

05:21PM 5 MS. BATSON: RIGHT. THE SOURCES OF SUPPLY.

05:21PM 6 THE COURT: I MEAN, THERE'S NO OPERATION HERE

05:21PM 7 WITHOUT GETTING THE METHAMPHETAMINE. AND THOSE WOULD BE

05:21PM 8 FERNANDO PERALES--I CAN'T REMEMBER--

05:21PM 9 MS. BATSON: HERE IT IS, YOUR HONOR. YOUR HONOR,

05:22PM 10 IT'S ON THE SCREEN. IF YOU WANT TO LOOK AT IT ON YOUR

05:22PM 11 COMPUTER, THAT MIGHT HELP.

05:22PM 12 THE COURT: WAS PERALES INDICTED? YES. OKAY.

05:22PM 13 PERALES, NGUYEN, SALAZAR. OKAY. SO JUST THREE FACTORS:

05:22PM 14 COMMON GOAL; NATURE OF THE SCHEME, WHICH IS INTERDEPENDENCE

05:22PM 15 AMONG MEMBERS; AND NEXUS AMONG MEMBERS, WHICH HAS TO DO WITH

05:23PM 16 PARTICIPATING WITH THE CORE CONSPIRATORS. THAT'S A FIFTH

05:23PM 17 CIRCUIT CASE.

05:23PM 18 AND THEN I LOOKED AT THE OTHER TWO CASES THAT

05:23PM 19 MR. GONZALEZ GAVE ME ON THIS ISSUE. ONE WAS A SEVENTH

05:23PM 20 CIRCUIT CASE, SHORTER. AND THE SEVENTH CIRCUIT SAID, "IF

05:23PM 21 THE DEFENDANTS JOIN TOGETHER FOR ONE COMMON DESIGN OR PURPOSE,

05:23PM 22 THERE'S A SINGLE CONSPIRACY. IN CONTRAST, IF THERE ARE

05:23PM 23 DISTINCT ILLEGAL ENDS AND NO OVERLAPPING INTERESTS BETWEEN

05:23PM 24 THE PARTIES, THEY'RE SEPARATE CONSPIRACIES." WELL, THERE ARE

05:23PM 25 OVERLAPPING INTERESTS HERE.

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05:24PM 1 AND THEN MALDONADO-RIVERA, WHICH IS A SECOND CIRCUIT  
05:24PM 2 CASE. THAT COURT OF APPEALS SAID, "A DEFENDANT MUST SHOW THERE  
05:24PM 3 WAS EVIDENCE OF SEPARATE NETWORKS OPERATING INDEPENDENTLY OF  
05:24PM 4 EACH OTHER." AND THAT WAS A REQUEST TO CHARGE THE JURY ON  
05:24PM 5 MULTIPLE CONSPIRACIES. SO THE CASE IS ON POINT. THE PROBLEM  
05:24PM 6 IS, IT'S THE SECOND CIRCUIT, NOT THE FIFTH CIRCUIT. BUT THEIR  
05:25PM 7 STANDARD IS A REQUIREMENT THAT THE DEFENDANT SHOW EVIDENCE OF  
05:25PM 8 SEPARATE NETWORKS OPERATING INDEPENDENTLY OF EACH OTHER. WE  
05:25PM 9 DON'T HAVE THAT HERE, I DON'T THINK.

05:25PM 10 THE SECOND CIRCUIT ALSO SAYS, "THE COCONSPIRATORS  
05:25PM 11 NEED NOT HAVE AGREED ON THE DETAILS SO LONG AS THEY AGREE  
05:25PM 12 ON THE ESSENTIAL NATURE OF THE PLAN. THE GOALS OF ALL  
05:25PM 13 PARTICIPANTS NEED NOT BE CONGRUENT SO LONG AS THEY ARE NOT  
05:25PM 14 AT CROSS-PURPOSES. LAPSES IN TIME, CHANGES IN MEMBERSHIP,  
05:25PM 15 SHIFTING EMPHASIS IN THE LOCALE OF OPERATIONS DOES NOT  
05:25PM 16 NECESSARILY CONVERT A SINGLE CONSPIRACY INTO MULTIPLE  
05:25PM 17 CONSPIRACIES. AND IT'S NOT NECESSARY THAT THE CONSPIRATORS  
05:25PM 18 KNOW ALL THE IDENTITIES OF ALL THE OTHER CONSPIRATORS."

05:25PM 19 SO THOSE TWO OUT-OF-CIRCUIT CASES WOULD SEEM TO  
05:26PM 20 SUPPORT THE GOVERNMENT.

05:26PM 21 MR. PETRAZIO: JUDGE--

05:26PM 22 THE COURT: I'VE NEVER HAD A REAL CLEAR PICTURE OF  
05:26PM 23 WHEN YOU GIVE A MULTIPLE-CONSPIRACY INSTRUCTION AND WHEN YOU  
05:26PM 24 DON'T.

05:26PM 25 MR. PETRAZIO: JUDGE, FROM MY PERSPECTIVE, I THINK

05:26PM 1 AS I SAT HERE DURING THIS TRIAL AND THERE WAS ONE WITNESS THAT  
05:26PM 2 TESTIFIED AGAINST MY CLIENT-- IT WAS A COCONSPIRATOR-- I THINK  
05:26PM 3 THAT MIGHT BE A SITUATION THAT WOULD LEND ITSELF TO MULTIPLE  
05:26PM 4 CONSPIRACIES. YOU HAVE ANDY NGUYEN TESTIFYING THAT HE ALWAYS  
05:26PM 5 GOT IT DIRECTLY FROM PRIMO. THEIR DIAGRAM THEY PUT UP SHOWS  
05:26PM 6 ANDY NGUYEN GETTING IT FROM CAZARES AND/OR MR. VEGA. BUT IF  
05:27PM 7 YOU LOOK AT THE TIME THAT THEY HAVE TESTIFIED THAT THEY HAD  
05:27PM 8 DRUGS, IT LOOKED LIKE MR. CAZARES HAD GONE OUT ON HIS OWN AND  
05:27PM 9 NOW  
05:27PM 10 WAS ATTEMPTING TO COOK METHAMPHETAMINE. THERE WAS NEVER ANY  
05:27PM 11 TESTIMONY OF WHAT THEY WERE GONNA DO WITH THAT. SO, AS FAR  
05:27PM 12 AS DISTRIBUTION, IT'S POSSIBLE THAT MR. CAZARES HAD DECIDED HE  
05:27PM 13 WAS GONNA GO OUT ON HIS OWN. I DON'T KNOW. I MEAN, THAT MIGHT  
05:27PM 14 LEND ITSELF TO AN ARGUMENT THAT MR. CAZARES HAD DECIDED THROUGH  
05:27PM 15 HIS CONNECTION THAT HE HAD NEWLY MADE WITH PRIMO IN MEXICO THAT  
05:27PM 16 HE WAS GONNA GO OUT ON HIS OWN. I DON'T KNOW THAT THEY TIED IT  
05:27PM 17 IN UNDERNEATH THAT. THERE WASN'T EVIDENCE OF THAT.

05:27PM 18 THE COURT: THE ONLY EVIDENCE ON YOUR CLIENT COMES  
05:27PM 19 FROM RAMIRO CAZARES.

05:28PM 20 MR. PETRAZIO: THERE'S TESTIMONY FROM MR. CAZARES  
05:28PM 21 THAT AT TIMES WHEN HE DROPPED MONEY OR GAVE MONEY OR DROPPED  
05:28PM 22 DRUGS IT WAS AT ONE POINT, IF YOU READ HIS TESTIMONY, TWO  
05:28PM 23 SKINNY WHITE GUYS; AND THEN IT'S ASIAN GUYS; AND THEN ANOTHER  
05:28PM 24 TIME TO WOMEN. BUT WE DON'T HAVE THE IDENTITY OF ANYONE, EVER,  
05:28PM 25 IN ANY OF HIS DEALINGS.

05:28PM 1 THE COURT: DID NGUYEN TESTIFY HE GOT HIS DRUGS FROM  
05:28PM 2 YOUR CLIENT?

05:28PM 3 MR. PETRAZIO: I DON'T BELIEVE SO. I BELIEVE THAT  
05:28PM 4 HIS TESTIMONY WAS EITHER HE GOT IT DIRECTLY FROM PRIMO OR COOL  
05:28PM 5 GUY DIRECTLY.

05:28PM 6 THE COURT: IS THAT YOUR RECOLLECTION, MR. GONZALEZ  
05:28PM 7 AND MS. BATSON?

05:28PM 8 MR. GONZALEZ: THAT HE--THAT WHO--THAT ANDY NGUYEN?

05:28PM 9 THE COURT: UH-HUH.

05:28PM 10 MR. GONZALEZ: HE IDENTIFIED THAT HE GOT THE DRUGS  
05:28PM 11 FROM CAZARES.

05:28PM 12 THE COURT: SO WHAT'S THE CONNECTION WITH VEGA?  
05:29PM 13 SIMPLY THAT CAZARES AND VEGA WORKED TOGETHER?

05:29PM 14 MR. GONZALEZ: AND VEGA INDICATED THAT HE WAS ALSO  
05:29PM 15 PICKING UP CURRENCY DURING THE TIME.

05:29PM 16 THE COURT: DID HE PICK IT UP FROM ANDY NGUYEN?

05:29PM 17 MR. GONZALEZ: HE SAID HE PICKED IT UP FROM TWO  
05:29PM 18 INDIVIDUALS AND DELIVERED THE MONEY TO TWO FEMALES. THAT'S  
05:29PM 19 WHAT I REMEMBER.

05:29PM 20 THE COURT: WELL, THE ONLY THING I HAVE ON CARLOS  
05:29PM 21 VEGA IS CAZARES KNOWS HIM, HE IDENTIFIED HIM. VEGA TOLD  
05:29PM 22 CAZARES HE PICKED UP THE MONEY AND DELIVERED IT TO TWO WOMEN.  
05:29PM 23 CAZARES CALLED JUAN VEGA, WHO DROVE A BLACK HONDA, TO MAKE  
05:29PM 24 THE PICKUP OF DRUGS. CAZARES--OR VEGA IS PICKING UP MONEY,  
05:29PM 25 GIVING IT TO TWO WOMEN, PICKING UP DRUGS--

05:29PM 1 MR. GONZALEZ: AND COOKING DRUGS.

05:29PM 2 THE COURT: --AND COOKING DRUGS.

05:30PM 3 MR. GONZALEZ: AND THEN CAZARES WAS DELIVERING IT

05:30PM 4 TO ANDY NGUYEN.

05:30PM 5 THE COURT: AND VEGA SAID IN HIS STATEMENT TO AGENT

05:30PM 6 MATA THAT HE WAS A RUNNER FOR CAZARES.

05:30PM 7 MR. GONZALEZ: CORRECT, YOUR HONOR. AND THAT HE

05:30PM 8 KNEW THAT PRIMO WAS A SOURCE OF SUPPLY FOR CAZARES.

05:30PM 9 THE COURT: THEN CAZARES IS DELIVERING TO ANDY

05:30PM 10 NGUYEN. WHY WOULD I NOT GIVE A MULTIPLE-CONSPIRACY INSTRUCTION

05:30PM 11 REGARDING VEGA?

05:30PM 12 MR. GONZALEZ: BECAUSE, YOUR HONOR, THE CHAIN OF

05:30PM 13 DISTRIBUTION IS FROM PRIMO, CAZARES AND VEGA TO ANDY NGUYEN.

05:30PM 14 ANDY NGUYEN THEN DELIVERS IT TO MIKE CAMACHO, WHO THEN DELIVERS

05:30PM 15 IT TO RENE SALAZAR, WHO THEN DELIVERS IT TO ALL THE PERSONS IN

05:30PM 16 SHERMAN. SO THAT'S THE CHAIN OF DISTRIBUTION. THAT'S ONE

05:30PM 17 CONSPIRACY.

05:30PM 18 THE COURT: ALL RIGHT. BUT IT'S ERROR IF THE COURT

05:31PM 19 REFUSES A REQUEST TO INSTRUCT ON MULTIPLE CONSPIRACIES AND THE

05:31PM 20 THEORY HAS ANY EVIDENTIARY SUPPORT. COULD MR. PETRAZIO NOT

05:31PM 21 ARGUE THAT MR. VEGA HAD ONLY AN AGREEMENT WITH CAZARES?

05:31PM 22 MR. GONZALEZ: NO. BECAUSE THE RECORDING WHERE--

05:31PM 23 IT'S CLEAR IN THE RECORDING THAT HE KNOWS WHO--ONE, HE TOLD

05:31PM 24 AGENT MATA THAT HE KNEW PRIMO WAS A SOURCE OF SUPPLY.

05:31PM 25 THE COURT: OKAY.

05:31PM 1 MR. GONZALEZ: SO HE HAS AN AGREEMENT WITH PRIMO,  
05:31PM 2 ALSO, 'CAUSE THAT'S WHO THEY'RE WORKING FOR.

05:31PM 3 MR. PETRAZIO: I DON'T KNOW THAT YOU CAN MAKE THAT  
05:31PM 4 JUMP.

05:31PM 5 MR. GONZALEZ: SO IT'S NOT ONLY WITH CAZARES, IT'S  
05:31PM 6 ALSO WITH THE SOURCE OF SUPPLY IN MEXICO. 'CAUSE THAT'S WHO  
05:31PM 7 THEY'RE WORKING FOR.

05:31PM 8 THE COURT: OKAY.

05:32PM 9 MR. GONZALEZ: PLUS, THERE'S ALSO THE TESTIMONY  
05:32PM 10 THAT PRIMO TOLD THEM HOW TO COOK. HE TOLD THEM. 'CAUSE YOU  
05:32PM 11 REMEMBER THE TESTIMONY OF CAZARES THAT HE SAID THAT HE PUT HIM  
05:32PM 12 ON THE SPEAKERPHONE SO THAT HE, PRIMO, COULD TELL THEM, WHICH  
05:32PM 13 IS VEGA AND CAZARES, HOW TO COOK THE METH. SO THEY'RE TAKING  
05:32PM 14 THEIR DIRECTION FROM PRIMO. SO I DON'T SEE HOW HE COULD ARGUE  
05:32PM 15 THAT IT'S SOMEBODY ELSE, YOU KNOW, THAT HE'S ONLY TAKING HIS  
05:32PM 16 ORDERS FROM CAZARES AND THAT THAT'S A SEPARATE CONSPIRACY.

05:32PM 17 THE COURT: HE COULD ARGUE IT'S A CONSPIRACY WITH  
05:32PM 18 CAZARES AND PRIMO AND THAT'S IT. I MEAN, JUST KNOWING THAT  
05:32PM 19 SOMETHING COMES FROM SOMEONE DOESN'T MEAN YOU HAVE AN AGREEMENT  
05:32PM 20 WITH THEM.

05:32PM 21 MR. GONZALEZ: BUT THEY'RE NOT ONLY DOING THAT,  
05:32PM 22 THEY'RE TAKING DIRECTION FROM HIM AND THEY'RE DOING SOMETHING  
05:32PM 23 FOR HIM. SO THERE'S AN AGREEMENT FOR THEM TO DO SOMETHING FOR  
05:32PM 24 HIM.

05:32PM 25 THE COURT: OKAY.

05:32PM 1 MR. GONZALEZ: AND THEN THAT DRUG THAT THEY'RE  
05:32PM 2 PROCESSING IS THE DRUG THAT THEY'RE DISTRIBUTING. THAT DRUG  
05:32PM 3 THAT THEY'RE DISTRIBUTING IS GOING TO ANDY NGUYEN. THAT DRUG  
05:32PM 4 THAT ANDY NGUYEN IS RECEIVING IS GOING TO MICHAEL CAMACHO.  
05:33PM 5 FROM MICHAEL CAMACHO, IT THEN GOES TO RENE SALAZAR, AND THEN IT  
05:33PM 6 GOES TO ALL THE PEOPLE DOWN IN SHERMAN. SO THAT'S WHY IT'S ONE  
05:33PM 7 SINGLE CONSPIRACY. AND THAT'S JUST KEEPING IT ON ONE SIDE OF  
05:33PM 8 THE DISTRIBUTION.

05:33PM 9 WE CAN THEN GO TO THE OTHER SIDE OF THE DISTRIBUTION,  
05:33PM 10 WHICH IS FERNANDO PERALES, AND IT'S THE SAME CONSPIRACY BECAUSE  
05:33PM 11 THE GOAL IS ONCE AGAIN THE SAME: GET THE METHAMPHETAMINE TO  
05:33PM 12 SHERMAN FOR DISTRIBUTION.

05:33PM 13 THE COURT: SO WHAT YOU ARE SAYING IS: THE  
05:33PM 14 DEFENDANT HAS TO DEMONSTRATE TO THE COURT, IN ORDER TO BE  
05:33PM 15 ENTITLED TO THE MULTIPLE-CONSPIRACY INSTRUCTION, THAT THERE IS  
05:33PM 16 A CLEAR SEPARATION BETWEEN WHAT HE WAS DOING AND WHAT ALL THE  
05:33PM 17 OTHERS WERE DOING?

05:33PM 18 MR. GONZALEZ: YES. BECAUSE THEY'RE INTERCONNECTED.  
05:33PM 19 IT'S A CHAIN OF DISTRIBUTION. THE BOTTOM PART OF THE CHAIN  
05:33PM 20 DOESN'T HAPPEN IF THE TOP PART OF THE CHAIN DOESN'T OCCUR. AND  
05:33PM 21 THAT'S WHAT'S HAPPENING HERE. IF IT'S BEING IMPORTED AND IT'S  
05:33PM 22 BEING MANUFACTURED HERE WHERE THEY'RE CONVERTING IT AND COOKING  
05:33PM 23 IT, IT DOESN'T GET TO SHERMAN IF THEY DON'T DO THEIR PART IN  
05:33PM 24 IT. AND THEY DON'T HAVE TO KNOW EVERYBODY IN SHERMAN--

05:34PM 25 THE COURT: OH, I KNOW.

05:34PM 1 MR. GONZALEZ: --THEY JUST HAVE TO KNOW ANDY NGUYEN,  
05:34PM 2 WHICH THEY DO, BECAUSE THAT'S WHO'S GETTING IT AND THAT'S WHO'S  
05:34PM 3 DISTRIBUTING IT AND FACILITATING THAT PART OF IT. AND THEN  
05:34PM 4 WHEN MICHAEL CAMACHO TAKES IT TO RENE SALAZAR, HE'S THE ONE  
05:34PM 5 THAT HAS THE DISTRIBUTION IN SHERMAN.

05:34PM 6 THE COURT: WELL, YOUR POSITION IS WHAT THE SECOND  
05:34PM 7 CIRCUIT SAYS, WHICH IS THAT A DEFENDANT MUST SHOW THAT THERE  
05:34PM 8 WAS EVIDENCE OF SEPARATE NETWORKS OPERATING INDEPENDENTLY  
05:34PM 9 OF EACH OTHER. I MEAN, AT LEAST THAT'S A CLEAR TEST.

05:34PM 10 MR. WHALEN: THE ONLY THING I WOULD ADD TO THAT  
05:34PM 11 IS THAT I THINK IF YOU LOOK AT THE TESTIMONY OF CAZARES, HE  
05:34PM 12 STARTED--HE SAYS HE GOT THIS PHONE CALL IN JANUARY OF 2012.  
05:34PM 13 HE GETS THIS CALL AND HE STARTS WORKING IN 2012. I THINK  
05:34PM 14 ALSO THAT THE TESTIMONY IS THAT MR. SALAZAR AND MR. HOUSE ARE  
05:35PM 15 INCARCERATED AND THEY'RE OUT IN AUGUST OF 2011. THEY'RE IN  
05:35PM 16 CUSTODY.

05:35PM 17 THE COURT: OKAY.

05:35PM 18 MR. WHALEN: SO THE ARGUMENT THAT THEN IT'S GOING  
05:35PM 19 TO ANDY NGUYEN, THEN GOING TO CAMACHO, THEN GOING TO SALAZAR,  
05:35PM 20 THAT'S NOT ACCURATE, BECAUSE THEN SALAZAR AND HOUSE ARE  
05:35PM 21 INCARCERATED AND NOT CONTINUING TO ACCEPT PRODUCT FROM  
05:35PM 22 MR. CAMACHO BECAUSE--

05:35PM 23 MR. GONZALEZ: YOUR HONOR, THAT ARGUMENT ALSO--  
05:35PM 24 DEFENSE COUNSEL MADE THAT ARGUMENT EARLIER. JUST BECAUSE  
05:35PM 25 PEOPLE LEAVE A CONSPIRACY DOESN'T MEAN THE CONSPIRACY ENDS.

05:35PM 1 THERE'S PEOPLE WHO GET ARRESTED AND DON'T WITHDRAW FROM  
05:35PM 2 THE CONSPIRACY AND COME RIGHT BACK INTO THE CONSPIRACY. SO  
05:35PM 3 THAT DOESN'T NECESSARILY MEAN THERE'S ONE CONSPIRACY AND THEN  
05:35PM 4 ANOTHER CONSPIRACY. I UNDERSTAND THAT'S WHAT MR. WHALEN IS  
05:35PM 5 SAYING.

05:35PM 6 THE COURT: THAT'S WHAT'S CONFUSING ABOUT THIS,  
05:35PM 7 THOUGH. I MEAN, YOU KNOW, IF YOU SHOW--THAT OUT-OF-CIRCUIT  
05:36PM 8 CASE--LET'S SEE. I'VE GOT TO GET BACK TO IT--IF YOU SHOW  
05:36PM 9 SEPARATE NETWORKS OPERATING INDEPENDENTLY OF EACH OTHER,  
05:36PM 10 THEN YOU ARE DEFINITELY ENTITLED TO THE INSTRUCTION.

05:36PM 11 YOU KNOW, MR. WHALEN, IT DOES LOOK LIKE ONE NETWORK  
05:36PM 12 HERE. I MEAN, THERE IS AN INTERRELATIONSHIP AMONG ALL OF THESE  
05:36PM 13 PEOPLE, INCLUDING YOUR CLIENT AND EVEN INCLUDING MR. PETRAZIO'S  
05:36PM 14 CLIENT. AND WHILE THERE WERE ONLY TWO WITNESSES TESTIFYING  
05:36PM 15 AGAINST JUAN CARLOS VEGA, THE JURY CAN CERTAINLY BELIEVE THEM.  
05:36PM 16 AND IF THE JURY BELIEVES THEM, THEY COULD FIND HIM GUILTY.

05:36PM 17 MR. PETRAZIO: UNDERSTOOD, YOUR HONOR. BUT I ALSO  
05:36PM 18 BELIEVE THAT MR. CAZARES IS THE ONE WITH THE AGREEMENT WITH  
05:36PM 19 PRIMO. OBVIOUSLY, I'M GOING TO ARGUE--

05:36PM 20 THE COURT: BUT VEGA IS WORKING WITH CAZARES AND  
05:37PM 21 HE'S AWARE OF PRIMO.

05:37PM 22 MR. PETRAZIO: HE IS AN EMPLOYEE FOR SIX YEARS ALSO.  
05:37PM 23 SO TO SAY THAT, YOU KNOW, THREE DAYS BEFORE THEY SHUT THIS  
05:37PM 24 THING DOWN AND THEY ARREST MY GUY BASED ON MR. CAZARES'S  
05:37PM 25 TESTIMONY AFTER HE'S IN CUSTODY, AND THAT'S ALL THE EVIDENCE

05:37PM 1 THAT THEY GATHER, COMES FROM MR. CAZARES, I'M GONNA MAKE THE  
05:37PM 2 ARGUMENT THAT, YOU KNOW, HE CAME IN AT THE LAST MOMENT ON THIS  
05:37PM 3 CASE. AND TO SAY THAT HE HAD AN AGREEMENT WITH PRIMO, WHO IS  
05:37PM 4 TO SAY PRIMO DIDN'T HAVE FOUR OTHER PEOPLE IN THE DALLAS  
05:37PM 5 METROPLEX THAT HE HAS HIS OWN CONSPIRACIES WITH? IF HE'S A  
05:37PM 6 MAIN SOURCE OF SUPPLY FROM MEXICO, I SUSPECT THAT'S THE CASE.

05:37PM 7 THE COURT: PRIMO MAY HAVE BEEN INVOLVED IN OTHER  
05:37PM 8 CONSPIRACIES, YEAH.

05:37PM 9 MR. PETRAZIO: RIGHT. AND MY POINT IS, FROM  
05:37PM 10 MR. VEGA'S PERSPECTIVE, HE DOESN'T KNOW WHAT HAPPENS AFTER  
05:37PM 11 HE GETS IT. AND IT'S NEVER BEEN TIED IN THAT MR. VEGA EVER  
05:37PM 12 GAVE TO ANYONE IN THIS CONSPIRACY. THAT HASN'T BEEN TIED IN.  
05:38PM 13 THERE'S NO EVIDENCE OF THAT. AND MY POINT IS, I GUESS, ALL  
05:38PM 14 OF A SUDDEN, ON APRIL 8TH OR 9TH, WHENEVER THEY GET ARRESTED  
05:38PM 15 WITH ALL THESE DRUGS THAT ALL OF A SUDDEN THEY'RE GONNA START  
05:38PM 16 COOKING, ISN'T THAT SOMETHING THAT THE PEOPLE BELOW THEM IN  
05:38PM 17 THIS CONSPIRACY WERE DOING? IT SEEMS THAT I COULD MAKE THE  
05:38PM 18 ARGUMENT THAT IF MR. CAZARES DECIDED--AND THE GOVERNMENT HAS  
05:38PM 19 SAID HE DID--TO START COOKING, THAT THEY WERE STARTING THEIR  
05:38PM 20 OWN DEAL IN DISTRIBUTING.

05:38PM 21 THE COURT: MR. GONZALEZ, WHAT DID YOU SAY THE  
05:38PM 22 EVIDENCE IS THAT CAZARES AND VEGA WERE DISTRIBUTING TO NGUYEN?  
05:38PM 23 DID YOU HAVE ANY EVIDENCE?

05:38PM 24 MR. GONZALEZ: CAZARES TESTIFIED THAT HE WAS  
05:38PM 25 DISTRIBUTING TO ONE OF THE RUNNERS. HE IDENTIFIED ONE OF THE

05:38PM 1 RUNNERS, WHICH WAS HOA MINH HOANG. IF YOU RECALL, HE SAID HE  
05:38PM 2 DELIVERED FOUR KILOGRAMS TO HOA MINH HOANG. AND THEN HOA MINH  
05:39PM 3 HOANG DELIVERED IT. AND THEN HE DELIVERED SOME MORE TO THEM.

05:39PM 4 THE COURT: OKAY.

05:39PM 5 MR. GONZALEZ: PLUS, THERE'S ALSO THE CONNECTION OF  
05:39PM 6 THE VEHICLE. IF YOU RECALL, PRIMO WANTED A VEHICLE, AND ANDY  
05:39PM 7 NGUYEN DELIVERED A VEHICLE TO MR. CAZARES. SO THAT'S THE  
05:39PM 8 CONNECTION BETWEEN THEM.

05:39PM 9 MR. PETRAZIO: JUDGE, THERE'S STILL NO EVIDENCE AS  
05:39PM 10 TO WHEN MR. VEGA PURPORTEDLY JOINED THIS CONSPIRACY. THERE IS  
05:39PM 11 TESTIMONY THAT THERE WERE FIVE, SIX, SEVEN TRANSACTIONS THAT  
05:39PM 12 MR. CAZARES DID FOR PRIMO PRIOR TO--THERE'S NO TESTIMONY FROM  
05:39PM 13 CAZARES SAYING AT WHAT POINT HE TOLD MR. VEGA ABOUT WHAT HE  
05:39PM 14 WAS DOING. SO TO ARGUE THAT THESE THINGS HAPPENED AND INVOLVED  
05:39PM 15 MR. VEGA WHEN WE DON'T HAVE A TIME PERIOD WHEN THAT COMES IN--

05:39PM 16 MR. GONZALEZ: WE HAVE A TIME PERIOD THAT WAS  
05:39PM 17 TESTIFIED BY MR. CAZARES AS TO HIS INVOLVEMENT.

05:39PM 18 MR. PETRAZIO: I DON'T SEE IT IN THE TESTIMONY.

05:39PM 19 THE COURT: VEGA WAS AWARE OF PRIMO, ACCORDING TO  
05:39PM 20 THE EVIDENCE. SOME EVIDENCE. VEGA'S RELATIONSHIP COULD HAVE  
05:40PM 21 BEEN STRICTLY WITH CAZARES AND DOING WHAT CAZARES TELLS HIM TO  
05:40PM 22 DO. AND HE'S STILL A CONSPIRATOR--

05:40PM 23 MR. PETRAZIO: I UNDERSTAND.

05:40PM 24 THE COURT: --IN THE OVERALL CONSPIRACY. THERE'S A  
05:40PM 25 COMMON GOAL OF DISTRIBUTING METHAMPHETAMINE FOR PROFIT AMONG

1600

05:40PM 1 ALL THESE PEOPLE. OR JUST FOR USE.

05:40PM 2 INTERDEPENDENCE? WELL, THEY'RE GETTING THE

05:40PM 3 METHAMPHETAMINE FROM--ACCORDING TO SOME OF THE EVIDENCE FROM

05:40PM 4 CAZARES AND VEGA AND NGUYEN AND PERALES, SALAZAR AND HOUSE,

05:40PM 5 DISTRIBUTORS INCLUDING HOA HOANG, MANUEL CAMACHO, PRISCILLA

05:40PM 6 MARCELENO CAMACHO, BOBBY JAMES. AND TIMOTHY BOWEN IS BUYING,

05:41PM 7 CHARLIE QUIROLO IS DISTRIBUTING. THE DEGREE OF INTERDEPENDENCE

05:41PM 8 OF THE ACTIONS OF MEMBERS--I THINK THERE'S INTERDEPENDENCE.

05:41PM 9 REQUIRED NEXUS. ARE THEY PARTICIPATING WITH CORE

05:41PM 10 CONSPIRATORS? THEY ALL HAVE TO BE PARTICIPATING WITH EITHER

05:41PM 11 NGUYEN OR PERALES OR HOUSE OR SALAZAR OR VEGA, SOMEBODY WHO IS

05:41PM 12 SUPPLYING DRUGS.

05:42PM 13 THE ONLY THING THAT BOTHERS ME IS THE LANGUAGE IN

05:42PM 14 SOME OF THESE CASES THAT SAYS--FOR EXAMPLE, IN THE ERWIN CASE,

05:42PM 15 WHICH IS A FIFTH CIRCUIT CASE, YOU GIVE THE INSTRUCTION IF

05:42PM 16 THERE'S ANY EVIDENCE TO SUPPORT IT WHATSOEVER. OF COURSE, IT

05:42PM 17 TAKES EVIDENCE TO SUPPORT IT. THAT'S WHERE YOU LOOK AT ISSUES

05:42PM 18 LIKE THE THREE-FACTOR TEST, WHICH I'VE JUST GONE THROUGH, AND

05:43PM 19 THE FIVE-FACTOR TEST.

05:43PM 20 TIME FRAMES DIFFERED. SOME OF THESE PEOPLE WERE

05:43PM 21 ARRESTED AT DIFFERENT TIMES AND TAKEN OUT OF THE PICTURE.

05:43PM 22 LOCATION WAS PRETTY MUCH THE SAME, THE DALLAS-FORT

05:43PM 23 WORTH AREA AND THE SHERMAN-DENISON AREA.

05:43PM 24 OKAY. MR. WHALEN, I DON'T KNOW WHETHER TO THINK

05:43PM 25 ABOUT IT OVERNIGHT OR TO GIVE YOU A RULING RIGHT NOW. I MEAN,

1601

05:43PM 1 YOUR GUY, TIM BOWEN, IS GETTING DRUGS FROM A LOT OF THESE OTHER  
05:44PM 2 CONSPIRATORS. I DON'T KNOW HOW YOU COULD ARGUE HE'S A MEMBER  
05:44PM 3 OF SOME SEPARATE CONSPIRACY.

05:44PM 4 SALAZAR DEFINITELY IS INVOLVED WITH MANY OF THESE  
05:44PM 5 PEOPLE. MOST OF THE PEOPLE WHO GOT ON THE WITNESS STAND  
05:44PM 6 TESTIFIED AND IDENTIFIED MR. SALAZAR AND TESTIFIED ABOUT  
05:44PM 7 HIS INVOLVEMENT WITH THEM.

05:44PM 8 JUAN CARLOS VEGA. CERTAINLY THE FEWEST WITNESSES  
05:44PM 9 TESTIFIED ABOUT VEGA. BUT IF THE JURY BELIEVES IT, BELIEVES  
05:44PM 10 THOSE TWO WITNESSES, AGENT MATA AND CAZARES--

05:44PM 11 MR. PETRAZIO: JUDGE, ALSO, AN ARGUMENT COULD BE  
05:44PM 12 MADE THAT THE FIRST FIVE OR SIX TRANSACTIONS THAT CAZARES DID  
05:44PM 13 FOR PRIMO DID RELATE TO THIS CASE. AND THEN, ONCE HE HAD DONE  
05:44PM 14 THAT, HE WAS FREE TO DO WHATEVER HE WANTED TO DO. YOU COULD  
05:45PM 15 MAKE AN ARGUMENT HE WITHDREW FROM THAT AND NOW DECIDED TO GO  
05:45PM 16 OUT ON HIS OWN DEAL.

05:45PM 17 THE COURT: YOU COULD MAKE THAT ARGUMENT.

05:45PM 18 MR. GONZALEZ: YOUR HONOR, AND THE TIME FRAME--  
05:45PM 19 JUST FOR THE RECORD, THE TIME FRAME, CAZARES SAID HE STARTED  
05:45PM 20 IN JANUARY 2012. ANDY NGUYEN WAS NOT ARRESTED UNTIL MARCH  
05:45PM 21 OF 2012. SO HE WAS STILL IN THE CONSPIRACY DURING THAT TIME  
05:45PM 22 PERIOD, THOSE MONTHS IN 2012.

05:45PM 23 THE COURT: OF COURSE, THE CAR THAT VEGA IS DRIVING,  
05:45PM 24 THE HONDA, SHOWS THE OWNER AS ANDY NGUYEN'S SISTER.

05:45PM 25 MR. PETRAZIO: VEGA DOESN'T KNOW THAT.

1602

05:45PM 1 THE COURT: WAIT A MINUTE. THESE ARE DOCUMENTS THAT  
05:46PM 2 ARE IN THE CAR.

05:46PM 3 MR. PETRAZIO: I UNDERSTAND. BUT THAT'S ASSUMING  
05:46PM 4 THAT VEGA EVER READ WHAT WAS IN THE GLOVE BOX. HE KNOWS HIS  
05:46PM 5 BOSS GAVE HIM A CAR TO DRIVE.

05:46PM 6 THE COURT: I DON'T KNOW THAT VEGA HAS TO KNOW  
05:46PM 7 NGUYEN PERSONALLY. BUT THERE'S DEFINITELY A RELATIONSHIP  
05:46PM 8 BETWEEN CAZARES AND NGUYEN, ACCORDING TO THE EVIDENCE. AND  
05:46PM 9 THEN YOU'VE GOT VEGA TAKING ORDERS FROM CAZARES. BASICALLY,  
05:46PM 10 VEGA WAS TAKING ORDERS FROM CAZARES.

05:46PM 11 DO YOU AGREE, MR. GONZALEZ?

05:46PM 12 MR. GONZALEZ: YES, I DO.

05:46PM 13 THE COURT: YOU JUST DON'T THINK THERE'S ANY  
05:46PM 14 EVIDENCE THAT VEGA AND CAZARES ARE OUT THERE DOING THEIR OWN  
05:46PM 15 THING?

05:46PM 16 MR. GONZALEZ: I DO NOT.

05:46PM 17 THE COURT: YOU THINK THEY'RE CONNECTED WITH THE  
05:46PM 18 OTHER PEOPLE HERE?

05:46PM 19 MR. GONZALEZ: I THINK THEY'RE WORKING FOR PRIMO AND  
05:46PM 20 THEY BOTH KNOW IT.

05:46PM 21 THE COURT: YEAH. AND I THINK YOU SAID EARLIER THAT  
05:46PM 22 THERE'S EVIDENCE THAT NGUYEN GOT DRUGS FROM CAZARES.

05:46PM 23 MR. GONZALEZ: YES. THROUGH THE--WE GOT THAT  
05:46PM 24 EVIDENCE THROUGH HIS DRIVER AND CAZARES.

05:47PM 25 THE COURT: AND BECAUSE CAZARES DELIVERED METH TO

1603

05:47PM 1 HOA HOANG, WHO IS NGUYEN'S COUSIN, AND THEY WERE WORKING FOR  
05:47PM 2 EACH OTHER--OR HOA HOANG WAS WORKING FOR NGUYEN.

05:47PM 3 MR. GONZALEZ: BOTH DRUGS AND MONEY.

05:47PM 4 THE COURT: I THINK THE EVIDENCE HERE IS ABOUT ONE  
05:47PM 5 CONSPIRACY. I'M GOING TO DENY YOUR REQUEST FOR A MULTIPLE-  
05:47PM 6 CONSPIRACY CHARGE. I DON'T THINK THE EVIDENCE RAISES IT.

05:47PM 7 THERE'S TOO MUCH INTERDEPENDENCE AMONG ALL OF THESE ALLEGED  
05:47PM 8 COCONSPIRATORS.

05:47PM 9 SO I WILL MAKE THE CHANGE THAT MR. GONZALEZ SUGGESTS  
05:47PM 10 ON THE VERDICT FORM. AND I CAN DO THAT TONIGHT WHILE YOU WAIT.  
05:47PM 11 OR I CAN HAVE THESE FOR YOU IN THE MORNING.

05:47PM 12 MR. PETRAZIO: IN THE MORNING, YOUR HONOR.

05:47PM 13 THE COURT: OKAY.

05:47PM 14 HOW MUCH TIME DO Y'ALL WANT TO ARGUE? DO YOU HAVE  
05:48PM 15 ANY IDEA? OR DO YOU WANT TO THINK ABOUT IT AND LET ME KNOW IN  
05:48PM 16 THE MORNING? I DON'T CARE. YOU CAN TELL ME TOMORROW MORNING.

05:48PM 17 MR. WHALEN: I'LL LET YOU KNOW IN THE MORNING.

05:48PM 18 THE COURT: OKAY. ALL RIGHT. I'LL SEE Y'ALL  
05:48PM 19 TOMORROW AT 9:00. THANK YOU.

05:48PM 20 [OVERNIGHT RECESS]

21 -----  
22  
23  
24  
25

1604

1                   COURT REPORTER'S CERTIFICATE  
2

3                   I CERTIFY THAT PAGES 1485 THROUGH 1626 CONTAIN A CORRECT  
4 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS.

5                   MAY 1, 2014.

6                   

7                   JERRY KELLEY, CRR  
8                   OFFICIAL COURT REPORTER  
9  
10                  U.S. COURTHOUSE  
11                  7940 PRESTON ROAD  
12                  PLANO, TEXAS 75024  
13                  214-872-4829

14                  -----  
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